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INDIAN CONSTITUTIONAL DOCUMENTS

1757—1947

VOLUME III : 1917—1935

By the same Author

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INDIAN CONSTITUTIONAL DOCUMENTS

1757—1947

EDITED BY

ANIL CHANDRA BANERJEE, M.A., Ph.D.

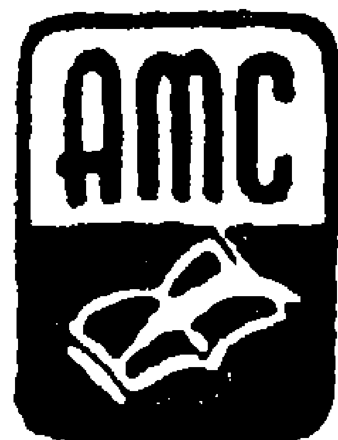
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IN FOUR VOLUMES

VOLUME III : 1917—1935



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PREFACE TO THE FIRST EDITION

This volume, like the preceding one, is intended to facilitate the study of Indian constitutional history. I have incorporated in it documents of various types: statutes, speeches, official statements, treaties, extracts from books, etc. The development of a constitutional system and the ramifications of an ever-growing administrative machinery cannot be understood simply from an analysis of legislative enactments. I have, therefore, tried to collect materials which an orthodox constitutional lawyer would hesitate to use but which historians can hardly afford to ignore. The abundance of materials has made it impossible for me to include extracts from the Government of India Acts, 1919 and 1935. I have also found myself unable to provide space for documents relating strictly to administrative problems. Towards the close of the period covered by this volume the problem of the States became closely associated with the constitutional problem in British India. As in the preceding volume, I have included some documents relating to the Indian States. Lack of space, however, is responsible for the exclusion of documents relating to the demands of the States people and the introduction of reforms in some of the States. For the convenience of the general reader I have added some notes and references and also a brief introductory survey. I hope they will be of some assistance in understanding the documents, although it is obvious that it is not my purpose to give an exhaustive summary of Indian constitutional history.

The volume ends with the frustration created by the Simla Conference of 1945. I have deliberately omitted any reference to the work of the Cabinet Mission (March-June, 1946). I hope, in common with all my fellow-countrymen, that the Constituent Assembly which is soon going to meet will be able to give India freedom and peace. If it succeeds in ushering a new era in our national history, the constitutional historian will have to record its achievements in volumes not encumbered with the story of past failures.

A. C. BANERJEE

PREFACE TO THE SECOND EDITION

Indian Constitutional Documents was originally published in two volumes. The first volume covered the period 1757-1858; the second volume dealt with the constitutional developments in India under the British Crown (1858-1945). I have now found it necessary to reprint the book in a larger form. So I have divided it into three volumes: Volume I, 1757-1858; Volume II, 1858-1917; Volume III, 1917-1939. Documents relating to the years 1939-1945 have been transferred to my book *The Making of the Indian Constitution* which covers the period 1939-1947.

The present edition of this volume contains many new documents. Document nos 5, 8, 9, 16, 17, 18, 19, 20, 21, 33, 41, 45, 47, 51, 53, 55, 56, 57, 63, 69, 70 have been inserted for the first time. Some new extracts have been added to Document nos. 12, 24, 32, 36, 37, 49, 52, 54. Introductory notes have been added to some of the documents. The *Introduction* has been partly re-written, but its scope remains unchanged. I hope this edition will be more useful to its readers in studying the period 1917-1939 than its predecessor

A. C. BANERJEE

PREFACE TO THE THIRD EDITION

In the present edition some new documents have been included, but the documents relating to the period 1936-1939 have been transferred to a new Volume, *i.e.* Volume IV.

A. C. BANERJEE

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INTRODUCTION

The Mont-Ford Reforms

The Congress-League Scheme[1], which followed the agreement between the Indian National Congress and the Muslim League, had many defects and was probably unworkable,[2] but it undoubtedly increased the strength of the Congress and made it necessary for the British Government to listen to its demands. There was, as yet, no question of struggle, violent or non-violent, for the achievement of Swaraj; self-government was expected to come through 'progressive improvement in our mental, moral and material condition'[3]. But the growing strength of the Indian nationalist movement and the part played by India in the Great War led the British Government to survey the Indian problem, in Asquith's words, 'from a new angle of vision'. The conclusion formed by the British Government was put in the Montagu-Chelmsford Report in the following words: "Indians must be enabled in so far as they attain responsibility to determine for themselves what they want done".

The Declaration[4] of August 20, 1917, was 'revolutionary' in the sense that it promised responsible government 'in the familiar British way'. It was a clear repudiation of the Morley-Minto policy, which had made no concession to the Congress demand for self-government within the British Empire[5] It was 'a declaration of belief in the philosophy of liberalism'. It was, we are told, based on the idea that liberty alone fits men for liberty.[6] But the machinery devised in accordance with this 'belief in the philosophy of liberalism' was hardly calculated to pave the way to liberty. The result was that the Act of 1919[7] was accepted by the Moderates to whom the mere recognition of India's 'eventual'[8] right to self-government was a great step

[1] See *Indian Constitutional Documents*, Vol II, pp. 289-295.

[2] See *Indian Constitutional Documents*, Vol. II, pp. 296-298.

[3] See *Indian Constitutional Documents*, Vol II, p. 288.

[4] Document No. 1.

[5] See *Indian Constitutional Documents*, Vol. II, pp. 286-289.

[6] Coupland, *The Constitutional Problem in India*, Part I, pp. 53-54.

[7] Document Nos. 5, 7, 8, 9, 10, 12, 13, 14. 15, 16, 18, 21, 22, 23, 24, 25, 26.

[8] Document No. 2.

forward, but it was rejected by the Congress[1] which was by far the most influential political body in India.

The Mont-Ford Reforms synchronised with a decisive stage in the evolution of the Congress from a constitutional body to a revolutionary organisation. The impact of the war, the tragedy at Amritsar, the Khilafat Movement which temporarily bridged the gulf between the Hindus and the Muslims—all these created a new situation and demanded a complete reorientation of policy and methods. Mahatma Gandhi brought from South Africa a spirit of direct struggle and a technique (*Satyagraha*) which, he claimed, never failed. The Congress was infected, and the fundamental change in its character was reflected in the first article of the constitution adopted in 1921: "The object of the Indian National Congress is the attainment of *Swarajya* by the people of India by all legitimate and peaceful means".[2] Self-government *within* the British Empire was no longer the goal, 'though it was not expressly ruled out'.[3] The goal was no longer to be attained solely through 'progressive improvement in our mental, moral and material condition' or through 'constitutional' means. Then followed what Coupland describes as 'The Revolt of the Congress'.

Of all the defects of the Act of 1919 particular attention may be directed to Dyarchy,[4] absence of even partial Responsible Government at the Centre,[5] and consolidation of separate electorates.[6] Dyarchy certainly failed to satisfy the Indian people. Those who accepted it found that it was too complicated to be smoothly worked. The Central Legislature harassed the Executive instead of controlling and influencing it. The consolidation of separate electorates made it difficult for Hindus and Muslims to work together in the political field and steadily destroyed the communal harmony arising out of the Khilafat Movement.

Revision of Mont-Ford Reforms

The opposition to the Act of 1919 did not soon exhaust its force; on the other hand, it became gradually stronger and more

[1] Document Nos. 7, 10.
[2] Document No. 53.
[3] Coupland, *The Constitutional Problem in India,* Part I, p. 67.
[4] Document Nos. 2 (II), 12, 26.
[5] Document Nos. 17, 22.
[6] Document Nos. 2 (III), 11, 16.

effective. On February 18, 1924, the Central Legislative Assembly carried a resolution at the instance of Pandit Motilal Nehru, demanding a Round Table Conference for framing a constitution for India.[1] Owing to the policy of obstruction pursued by the Swarajists[2] no stable Ministry could be formed in Bengal and the Central Provinces. The Government of India partly responded to public opinion by appointing the Reforms Enquiry Committee under the Chairmanship of Sir Alexander Muddiman.[3] The response of the British Government took the shape of the all-white Simon Commission. In spite of the boycott organised by the Congress[4] the Simon Commission carried on its investigations which were ultimately summarised in its Report.[5] Meanwhile the Congress was changing its creed to complete independence[6] although the Nehru Committee recommended Dominion Status[7] and the atmosphere in the country was changing for the worse.

In October, 1929, the British Government accepted Sir John Simon's suggestion of summoning a conference of representatives of British India and the Indian States. The deliberations of the Round Table Conference might have been more useful and practical had it been a smaller and homogeneous body. The emergence of the Federal idea as a practical solution of the Indian constitutional problem was the only tangible achievement.[8] Mahatma Gandhi's appeal to trust the Congress[9] found no response, and his failure to solve the communal problem led to Ramsay MacDonald's "Communal Award" and the Poona Pact.[10] Thus the system invented in 1906 was consolidated and extended in 1932.

The proposals of the British Government (embodied in a White Paper published in 1933) were scrutinised by a Joint Parliamentary Committee presided over by Lord Linlithgow.

[1] Document No. 17.
[2] Document No. 10.
[3] Document No. 12.
[4] Document No. 20.
[5] Document Nos. 21, 22, 23, 24, 25, 26, 31.
[6] Document No. 30.
[7] Document No. 27.
[8] Document Nos. 34, 37, 51.
[9] Document No. 33.
[10] Document No. 35.

The Government of India Bill based on the White Paper and the Report[1] of this Committee became an Act[2] on August 2, 1935.

The Act of 1935

It is interesting to compare Sir Samuel Hoare's defence[3] of the Act of 1935 with Mr. Attlee's criticism[4], in view of the fact that twelve years later it fell to the latter's lot to modify the traditional British policy towards India. In India the Act proved unsatisfactory to all important parties.[5] The Congress point of view[6] was clearly expressed in the sober and analytical address of Dr. Rajendra Prasad in Bombay in 1934. The Muslim League condemned the Federal Scheme as "fundamentally bad...... most reactionary, retrograde, injurious and fatal to the vital interests of British India *vis a vis* the Indian States, and.... calculated to thwart and delay indefinitely the realisation of India's most cherished goal of complete Responsible Government and is totally unacceptable", although the Provincial Scheme was to be "utilised for what it is worth"[7]. The Princes lost their enthusiasm and became reluctant to commit themselves to a system which implied loss of autocratic privileges; Lord Linlithgow's attempts to convince them of the potentialities of the Federal Scheme did not succeed.

The Provincial Scheme contained in the Act of 1935 was put in operation in April, 1937. After the elections, which resulted in Congress victory in most of the Provinces, the question of office-acceptance became acute. The Muslim League was then just coming out of the wilderness. It eagerly captured Provincial administration wherever it could, but the Congress remained aloof in distrust. Lord Linlithgow was very anxious to prove the worth of the Constitution of which he himself was one of the framers. He solemnly assured the Congress that the Governors would not interfere in the day-to-day

[1] Document Nos 37, 38, 39
[2] See *Indian Constitutional Documents,* Vol IV, Document No. 1.
[3] Document No. 42.
[4] Document No. 43
[5] Document No. 40.
[6] Document Nos. 40 (I), 41.
[7] Document No. 40 (II).

administration of the Provinces. The Congress accepted office. But the crisis of the Second World War widened the gulf which separated the Congress from the British Government. The Congress Ministers resigned. Provincial Autonomy in most of the Provinces was replaced by the dictatorial rule of the Governors under Section 93 of the Act of 1935[1].

Provincial Autonomy

The most important feature of the Act of 1935 was Provincial Autonomy. From this point of view it marked the culmination of the reaction against the Charter Act of 1833, which had made the Provincial Governments completely subordinate to the Central Government in legislation as well as administration. That centralisation led to inconvenience and even conflict; the growing complexities of legislation and administration demanded gradual relaxation of the control of the Government of India[2]. The Act of 1861 introduced partial decentralisation in the sphere of legislation, and Lord Mayo's scheme of financial decentralisation introduced a new tendency in Indian administration. In 1891 Lord Lansdowne declared, "We are all of us fond of dwelling upon the necessity of decentralising our administration". He found in the States a good instrument of decentralisation[3] In the days of Lord Curzon the old policy of centralisation was to a large extent restored. In 1907 Lord Morley appointed the Decentralisation Commission, which recommended the relaxation of Central control over the details of Provincial administration. Certain changes in the system of financial administration were introduced in 1912, but there was no basic alteration in the relations between the Central and Local Governments.

A new policy was indicated by the Government of India in a despatch to the Secretary of State, dated August 25, 1911, in which it was observed, "..... it is certain that, in the course of time, the just demands of Indians for a larger share in the government of the country will have to be satisfied, and the question will be how this devolution of power can be conceded without impairing the supreme authority of the Governor-

[1] See *Indian Constitutional Documents*, Vol IV.
[2] See Bisheshwar Prasad, *The Origins of Provincial Autonomy*
[3] See *Indian Constitutional Documents*, Vol. II, p. 348.

General in Council. The only possible solution of the difficulty would appear to be gradually to give the provinces a larger measure of self-government, until at last India would consist of a number of Administrations, autonomous in all Provincial affairs, with the Government of India above them all, and possessing power to interfere in case of misgovernment, but ordinarily restricting their functions to Imperial concern". Although the Secretary of State, Lord Crewe, declared that decentralisation did not imply popular control over Provincial administration, yet the idea of ''Administrations autonomous in all Provincial affairs'' captured the imagination of Indian political leaders. The Congress-League Scheme declared: "The Government of India shall not ordinarily interfere in the local affairs of a province, and powers not specifically given to a Provincial Government shall be deemed to be vested in the former"[1]. The Montagu-Chelmsford Report recommended that centralisation must diminish in proportion to the introduction of popular control over Provincial administration[2]. The Act of 1919 freed the Provincial Governments to a large extent from the control of the Government of India by providing for delegation and devolution of authority[3], but the constitution remained unitary.

The idea of creating a Federation composed of British Indian Provinces and Indian States had originated even before the introduction of the Montagu-Chelmsford Reforms,[4] but it did not take a practical shape with the support of the Princes before the Round Table Conference[5]. In a Memorandum circulated by Mahatma Gandhi at the Round Table Conference the Congress standpoint was expressed as follows: "The future constitution of the country shall be federal. The residuary powers shall vest in the federating Units, unless, on further examination, it is found to be against the best interest of India." While recommending Provincial Autonomy the Joint Parliamentary Committee emphasized that the unity of India must be maintained.[6]

[1] See *Indian Constitutional Documents*, Vol. II, pp. 294-295.
[2] Document No. 2 (IV).
[3] Document Nos. 2 (IV), 5.
[4] Document No. 51 (IV).
[5] Document Nos. 37, 51.
[6] Document No. 37.

The type of Provincial Autonomy introduced by the Act of 1935 did not satisfy the Congress,[1] although Lord Linlithgow repeatedly emphasized its political value. The Muslim League was definitely hostile to the Federal Scheme, but it decided, in the hope of capturing power in the Muslim-majority Provinces, that "the Provincial Scheme of the constitution be utilised for what it is worth".[2] The way was thus prepared for the attempt to vivisect India on communal grounds.

The Communal Problem

The communal unity symbolised by the Khilafat Movement reached its climax in 1921, but soon afterwards a gradual worsening of the communal situation began All hopes of forging new bonds of unity between the Congress and the League were practically given up on the failure of the All Parties' Conference in Calcutta in 1928. No concession on the part of the Congress[3] could create a new atmosphere, and the British Government tried its best to prevent the emergence of any united political front in India[4] Mr. Jinnah circulated his "Fourteen Points"[5] In the Round Table Conference the Nationalist Muslims had no representative, and when Pandit Madan Mohan Malaviya held a Unity Conference at Allahabad to placate the Muslim League, Sir Samuel Hoare offered better terms (33 per cent representation in the Central Legislature and separation of Sind). All chances of unity were thus irretrievably lost, and the solid product of the Round Table Conference was the "Communal Award"[6] devised by the British Government. The Congress adopted an anomalous attitude towards the "Communal Award",[7] but this halting concession failed to satisfy Mr. Jinnah and his followers.

Mr. Jinnah was already giving up his old nationalist ideas

[1] Document No. 41.
[2] Document No 40
[3] Document Nos. 11, 36
[4] See p 170, Lord Birkenhead's letter
[5] Document No 36 (II). See Coupland, *The Constitutional Problem in India,* Part II, p. 111. All these points, except one, were practically conceded by the Reforms of 1935.
[6] Document No. 35.
[7] Document No. 36.

and increasing his influence on his own community.[1] He decided to accept the Provincial Scheme of the Act of 1935 although he was strongly opposed to the Federal Scheme.[2] When the Congress accepted office in certain Provinces in 1937 Mr. Jinnah protested strongly against what he called the policy of "Hindusthan for the Hindus". He "exposed" the "game" of "Congress Fascism" and levelled some specific charges against the Congress Ministries. These charges were repudiated by the Congress, and Mr. Jinnah made no attempt to substantiate them, although he demanded a Royal Commission composed of judges. He found in the Congress demand for a Constituent Assembly an attempt to consolidate the dreaded "Hindu Raj"[3]. No agreed solution of the constitutional problem was thus possible. The outbreak of the Second Great War widened the gulf between the three parties—the British Government, the Congress and the League. Mr. Jinnah began to develop the theory of "two nations" which Sir Wazir Hasan had propounded in his Presidential address at the Bombay session of the Muslim League in 1936:

"It should always be borne in mind that India is a continent It should further be borne in mind that the Hindus and the Mussulmans inhabiting this vast continent are not two communities but should be considered two nations in many respects".[4]

The Indian States

Lord Curzon described the Indian Princes as "colleagues and partners"[5] of the British rulers of India. In other words, to quote Mahatma Gandhi, they had become "British officers in Indian dress"[6]. As a result of his transformation into "an integral factor in the Imperial organisation of India" the "Native Chief" gradually lost his contact with the people; he was found

[1] See H Kabir, *Muslim Politics*, pp. 10-12; B. M Chaudhuri, *Muslim Politics in India*, pp. 46-47.
[2] Document No. 40 (II).
[3] See *Indian Constitutional Documents*, Vol. IV.
[4] Mohammad Noman, *Muslim India*, p. 326
[5] *Indian Constitutional Documents*, Vol. II, p. 349.
[6] Document No. 52.

more "on the polo-ground, or on the race-course, or in the European hotel"[1] than among his suffering subjects. Some wise British administrators foresaw the inevitable effects of this growing estrangement between the Rulers and the people. One Viceroy after another—from Lord Lansdowne to Lord Linlithgow—warned the Princes that their States should be well-governed. The spirit underlying these warnings was quite in harmony with the system of Patriarchal Government which prevailed in British India till the early years of the present century; but as a result of the gradual introduction of political reforms in British India that oft-repeated insistence on good government became an anachronism. It was certainly too late in 1939 to say that "the decision as to the constitution best suited to the needs of his people rests with the Ruler himself to take, and . . . . no pressure will be brought to bear on him in this respect by the Paramount Power".[2] This policy might have been appropriate if the British Government recognised the validity of the Nizam's claim that Hyderabad[3] was quite independent "save and except matters relating to foreign powers and policies";[4] but the implications of paramountcy set forth in Lord Reading's famous letter to the Nizam and in the Report of the Butler Committee[5] reveal the hollowness of British respect for the internal autonomy of the Princes. On the whole, the policy pursued by the Government of India to the question of constitutional reforms in the States justifies the conclusion that the Princes were deliberately left free to continue the medieval system of autocracy as long as they remained submissive to the Political Department of the Government of India.

The legal and historical aspects of "treaty rights" were discussed by the Nehru Committee[6] and the Butler Committee[7]. These discussions were more or less academic. The Nehru Committee rightly pointed out that the question of the States "is more a case for the constructive statesman than for the analyti-

[1] *Indian Constitutional Documents,* Vol II. p. 349.
[2] See *Indian Constitutional Documents,* Vol. IV.
[3] Document No. 48 shows that other States also claimed similar rights.
[4] Document No. 45.
[5] Document No. 50.
[6] Document No. 47.
[7] Document No. 50.

cal lawyer". Even the 'analytical lawyer' could hardly afford to forget that treaties concluded more than a century ago under circumstances having not the remotest resemblance to the political condition of India in the thirties of the present century, and differently interpreted by the Paramount Power at different times, could no longer be invoked in defence of a system which public opinion was not prepared to tolerate. The Indian States were not governed by International Law, but the principle of *rebus sic stantibus* is based on sound practical considerations which statesmen cannot afford to ignore.

The Nehru Committee discussed the question whether the Paramountcy of the Crown could be transferred to the Government of India if India attained Dominion Status The Act of 1935 (and later, the Indian Independence Act, 1947) repudiated the claim of the Nehru Committee that such transfer was permissible The Act of 1935 provided that the Crown Representative, not the Governor-General or the Government of India, would deal with the claims of Paramountcy. The Congress adopted a cautious policy towards the States, but the growing political discontent in British India did not leave the States unaffected. Lord Linlithgow failed to persuade the States to join the proposed Federation. It was left for Sardar Vallabhbhai Patel to remove the barriers between "British India" and "Princely India" and to relegate to the care of the historian the multi-coloured relics of our romantic past.

Retrospect

In a sense the constitutional history of India begins in 1917. The three Indian Councils Acts (1861, 1892, 1909)[1] did not transfer power to India, nor did they encourage feeling of responsibility in the elected Indian members of the Legislatures The authors of the Montagu-Chelmsford Report observed that the Morley-Minto Scheme failed because it "ceased in the brief space of ten years' time to satisfy the political hunger of India".[2] Had they been able really to feel the pulse of this country, they would have understood that the Reforms of 1909

[1] *Indian Constitutional Documents,* Vol. II
[2] *Report,* Para 100.

had not 'satisfied the political hunger of India' even when they were promulgated. Looking back on the events of the period before 1947 we may observe that the Governments of Britain—whether Liberal, or Conservative, or Labour—never made any earnest attempt "to satisfy the political hunger of India" till circumstances made it absolutely necessary for Britain to withdraw from India. What the "agitators" said in those days of frustration will now, it seems, be acclaimed as the verdict of sober history. Had Britain realised the intensity of India's "political hunger" the Mont-Ford Scheme might have been more generous. Whatever concessions it made were due, not to generosity or political sympathy, but to pressing political and military necessity. Referring to Mr. Montagu's Announcement of August 20, 1917, an American writer says: "It was the product of motives that were more or less contradictory. India was to be rewarded for her loyalty and at the same time bribed to keep quiet while the Empire was fighting for its life"[1] These 'contradictory motives' undoubtedly explain some of the contradictions and incongruities in the Act of 1919. But that Act undoubtedly made a new departure in British Indian history: for the first time in the history of British rule it provided for transfer of power, even though the transfer was halting and the power extremely limited.

It is interesting, if unprofitable, to speculate whether the Act of 1919 contained within itself germs of steady constitutional progress. One writer says: "The chief obstacle was political rather than constitutional. There was only one large and well-organized party or political bloc in India and it was irreconcilable".[2] This attempt to distinguish between political and constitutional obstacles to the working of the Act of 1919 is really begging the question. No constitution can be worked successfully in any country if it fails to satisfy the "political hunger" of the people. If organised political opinion is irreconcilably opposed to a particular constitution it is useless to discuss its theoretical merits or demerits. The British Government knew that the only "well-organized party" in India, *i.e.*, the Congress, was "irreconcilable". Had it been really anxious to

[1] W. R. Smith, *Nationalism and Reform in India*, p. 82.
[2] W. R. Smith, *Nationalism and Reform in India*, p. 112.

secure genuine constitutional progress it would have tried to satisfy this party instead of weakening it by encouraging Moderates and Muslims. Even from the strictly constitutional point of view the British Government and its agents in India jeopardised the success of the "experiment"[1] by ill-advised opposition to popular wishes and opinions. Lord Reading used the power of certification to protect the Indian Princes from criticism and to increase the salt tax. In his famous "Steel Frame" speech in the House of Commons on August 2, 1922, Mr. Lloyd George declared that he could see no time when India could dispense with the guidance and assistance of the Indian Civil Service. Popular suspicions were strengthened by the appointment of the Lee Commission and confirmed by its recommendations. An American writer admits that "the British civilians as a class had . . . been obviously hostile to the Reforms".[2] If the Nationalists were guilty of destructive criticism and wrecking tactics, the rulers were no less guilty of destructive speeches and provocative actions.

So the Act of 1919 failed, and the British Government recognised its failure by appointing the Simon Commission. Once again it failed to take into account the views—call them prejudices if you will—of "the only one large and well-organized party" in India. It did not strike the British rulers that a political enquiry boycotted by the leading exponents of popular wishes could not succeed. True to traditional British policy, Lord Birkenhead tried "to terrify the immense Hindu population by the apprehension that the Commission is being got hold of by the Moslems and may present a report altogether destructive of the Hindu position". An American writer says, "If Lord Birkenhead and his associates did not deliberately intend to insult and humiliate the people of India they were woefully ignorant of racial psychology".[3]

As the Simon Commission proceeded with its work in spite of Congress boycott it was, to quote its own words, "increasingly impressed by the impossibility of considering the constitutional

[1] Mr. Lloyd George used this word with reference to the Reforms of 1919.

[2] W. R. Smith, *Nationalism and Reform in India*, p. 121.

[3] W. R. Smith, *Nationalism and Reform in India*, p. 375.

problems of India without taking into account the relations between British India and the Indian States". So it recommended that the British Government should summon both representatives of British India and representatives of the States to a conference "for the purpose of seeking the greatest possible measure of agreement for the final proposals which it would later be the duty of His Majesty's Government to submit to Parliament". This was the origin of the Round Table Conference. The idea of including "British India" and "Indian India" in one comprehensive constitutional scheme was a novelty in those days, and from the political and constitutional points of view it was certainly a welcome novelty.

But was it an attempt to rally the Princes against the rising tide of Nationalism? Many shrewd observers of political events in India suspected that in summoning the Princes to the Round Table Conference the British Government was not guided by a genuine desire to bring uniformity to India's political scene; it was rather anxious to utilise the Princes for the purpose of nullifying in practice such transfer of power as it might be forced to make in theory. It must not be forgotten that, in Mahatma Gandhi's words, the Princes were "British officers in Indian dress"[1]. These "officers" could hardly be taken as friendly and reliable partners by the Nationalists who wanted real transfer of power. But the Government of India Act made the establishment of federation dependent upon the co-operation of the Princes.[2] It was to be, said the President of the Congress, "a kind of federation in which unabashed autocracy will sit entrenched in one-third of India and peep in every now and then to strangle popular will in the remaining two-thirds".[3]

It is somewhat strange that the Princes finally refused to be roped in by the Paramount Power. They decided not to join the Federation, and their non-co-operation, apart from the policy of the Congress and the Muslim League, torpedoed the carefully framed Federal Scheme. As Dr. Rajendra Prasad had predicted, " . . . . the Princes themselves will be more helpless than they are now and will soon realise the effect of a federation which is conceived to keep them free from the baneful interference of British India people but nonetheless subservient to the

[1] Document No. 52.
[2] Section 5 of Act of 1935.
[3] Document No. 41, pp. 279—280.

Viceroy".[1] Acceptance of the Federal Scheme would mean for the Princes submission to dual authority. The Federal Government of India, in which the Congress was sure to exercise predominant, if not always effective, influence, would control the administration of the States in some essential matters, and it was well-known that under modern conditions the Centre was likely to grow at the cost of the units. But acceptance of Federal control would not free the Princes from the undefined control of the Paramount Power. The Report of the Butler Committee had not accepted the Princes' views on Paramountcy When the Act of 1935 was on the anvil the Princes wanted an authoritative definition of Paramountcy; but the reply was vague and disappointing. "The nature of their relationship to the King-Emperor," observed the Secretary of State, "is a matter which admits of no dispute." In other words, Paramountcy would remain paramount even if some part of "internal sovereignty" was surrendered to the Congress-dominated Federation. Why should the Princes welcome two masters in place of one ?

If the Princes were afraid of the Congress, the Congress was also afraid of them. One of the principal objections of the Congress to the Federal Scheme related to the position of the Princes in the Federation[2]. Of course there were other objections, *e g.*, no real transfer of power in the Centre, defects of the Provincial Scheme, special powers of Governor-General and Governor, protection of European interests, etc.[3] The Congress pursued a consistent policy of opposition to the Act of 1935, particularly to the Federal Scheme, and laid down the democratic principle of framing a new constitution through a really representative Constituent Assembly. The British Government did not take this proposal seriously, and it found an able ally in Mr. Jinnah, whose only constructive (?) suggestion came in a nebulous form in 1940 in the shape of the famous Pakistan resolution.

[1] Document No. 41, p. 280.
[2] See pp. 268, 280.
[3] Document Nos. 40 (1), 41.

INDIAN CONSTITUTIONAL DOCUMENTS

1. MONTAGU'S DECLARATION[1], 1917.

[Mr. Montagu had been Parliamentary Under-Secretary for India under Lord Morley and Lord Crewe. His views on the relation between the 'Home' Government and the Government of India alarmed Lord Minto. Mr. Montagu said in his Budget speech in August, 1910, "The relations of the Viceroy to the Secretary of State are intimate and responsible. The Act of Parliament says 'that the Secretary of State in Council shall superintend, direct and control all acts, operations, and concerns which in any way relate to or concern the government and revenues of India, and all grants of salaries, gratuities or allowances, and all other payments and charges whatever out of or on the revenues of India'. It will be seen how wide, how far-reaching, and how complete these powers are. Lord Morley and his Council, working through the agency of Lord Minto, have accomplished much".[2] Regarding this speech Lord Minto wrote to Lord Morley on August 18, 1910, ". . . his reference to the position of the Government of India has taken every one aback. I had not realized that the Viceroy was merely an *agent* and the Government of India apparently only a registry office ! . . . . . .Chapter V on 'The Home Government'[3]. . . . . .in Sir J. Strachey's book *India, Its Administration and Progress*, explains the view I have always understood to be accepted as to the relations of the Secretary of State and Government of India. . . . ."[4]

Montagu on authority of Secretary of State

Minto's view

In 1912 Mr. Montagu came to India to acquaint himself personally with the country, her people and her problems. Mr C. Y. Chintamani says, "Mr. Montagu was not an ordinary friend of India. He had a passion for India. As a result of all that I saw and knew and learnt I do not hesitate to give the first place to Mr. Montagu among all the Secretaries of State for India. . . . .no one before or after Mr. Montagu came anywhere near him in love of India and service of the Indian people "[5]

Montagu "had a passion for India"

Soon after his arrival in India Lord Chelmsford came to the conclusion "that the endowment of British India as an

[1] House of Commons, August 20, 1917.

[2] John Buchan, *Lord Minto*, pp. 309—310.

[3] See *Indian Constitutional Documents*, Vol. II, Document No. 23.

[4] Lady Minto, *India, Minto and Morley*, p. 408.

[5] *Indian Politics Since the Mutiny*, pp. 79, 80.

Chelmsford on self-government for India

integral part of the British Empire with self-government was the goal of British rule". He forwarded to the Secretary of State, Sir Austen Chamberlain, proposals "to confer greater powers and a more representative character upon existing local self-governing units such as district (rural) boards and municipal councils; to increase the proportion of Indians on the higher administrative posts, and to pave the way for an enlargement of the constitutional powers of the provincial legislatures by broadening the electorate and increasing the number of elected members". Sir Austen Chamberlain did not favour these proposals. He was not prepared to avow more than "an intention to foster the gradual development of free institutions with a view to self-government" On succeeding him Mr Montagu prepared a draft formula which was put in its final form by Lord Curzon.[1]]

Political goal of India

The policy of His Majesty's Government, with which the Government of India are in complete accord, is that of the increasing association of Indians in every branch of the administration and the gradual development of self-governing institutions with a view to the progressive realization of responsible government in India as an integral part of the British Empire. They have decided that substantial steps in this direction should be taken as soon as possible, and that it is of the highest importance as a preliminary to considering what these steps should be that there should be a free and informal exchange of opinion between those in authority at Home and in India. His Majesty's Government have accordingly decided, with His Majesty's approval, that I should accept the Viceroy's invitation to proceed to India to discuss these matters with the Viceroy and the Government of India, to consider with the Viceroy the views of Local Governments, and to receive with him the suggestions of representative bodies and others.

Exchange of opinion between British and Indian Governments

I would add that progress in this policy can only be achieved by successive stages. The British Government and the Government of India, on whom the responsibility lies for the welfare and advancement of the Indian peoples, must be judges of the

Progress by successive stages

[1] See Ronaldshay, *Life of Lord Curzon,* Vol. III, pp. 165—167.

time and measure of each advance, and they must be guided by the co-operation received from those upon whom new opportunities of service will thus be conferred and by the extent to which it is found that confidence can be reposed in their sense of responsibility.

Co-operation and sense of responsibility shown by Indians will determine stages of progress.

Ample opportunity will be afforded for public discussion of the proposals which will be submitted in due course to Parliament.

2. MONT-FORD REPORT, 1918.

[Mr Montagu came to India in November, 1917. His published *Diary* gives some account of his activities in this country The *Report* was drafted by Mr. (later Sir) William Marris[1] of the Indian Civil Service, and published in July, 1918. The Government of India Bill based on it was introduced in the House of Commons on June 2, 1919. The Joint Parliamentary Committee, presided over by Lord Selborne, altered some provisions of the Bill and submitted its report in November, 1919. The Bill became an Act on December 23, 1919, and came into full operation in 1921.]

I. Goal of Political Evolution in India

Self-governing Provinces

349. Our conception of the eventual future of India is a sisterhood of States, self-governing in all matters of purely local or provincial interest, in some cases corresponding to existing Provinces, in others perhaps modified in area according to the character and economic interests of their people. Over this congeries of States would preside a central Government, increasingly representative of and responsible to the people of all of them; dealing with matters, both internal and external, of common interest to the whole of India; acting as arbiter in inter-state relations, and representing the interests of all India on equal terms with the self-governing units of the British Empire. In this picture there is a place also for the Native States. It is possible that they too will wish to be associated for certain purposes with the organization of British India in such a way as to dedicate their peculiar qualities to the common service without loss of individuality.

Representative and Responsible Central Government

Indian States

[1] Later Governor of the United Provinces.

350. But it seems to us axiomatic that there cannot be a completely representative and responsible Government of India on an equal footing with the other self-governing units of the British commonwealth until the component States whose people it represents and to whom it is responsible, or at least the great majority of them, have themselves reached the stage of full responsible government. Nor even then can we say that the form or the degree of responsibility which will be reached in India will exactly correspond to that attained by the Dominions. The final form of India's constitution must be evolved out of the conditions of India, and must be materially affected by the need for securing Imperial responsibilities. The dominating factor in the intermediate process must be the rate at which the Provinces can move towards responsible government. At the same time change obviously cannot be confined to the Provinces. In proportion as they become more responsible the control which the Government of India exercises over them must diminish. But it is not merely a question of the extent of the control; the nature and manner of its exercise must in course of time be modified. We cannot think that States on the way to responsible government, which have imbibed a large element of responsibility into their constitutions, can be controlled by a purely autocratic power. So also with the duties extending over the whole of India which will be discharged by the Government of India as its special concern. It is impossible that while other duties which differ from them mainly in being local in scope or subject to provincial differentiation are being administered by responsible Governments, those which fall to the Government of India should be administered autocratically. It follows, therefore, that change in the Provinces implies change in the Government of India, but it does not imply that the change should be simultaneous or in equal proportion. On the contrary the change need simply be so much as to render the Government of India a suitable instrument for con-

Responsible Government in Provinces is an essential step towards Responsible Government at the Centre.

Nature of change in the Central Government

trolling the Provinces at the stage at which they have for the time being arrived.

351. Similarly all movement towards responsible government in India implies a corresponding change in the constitution of the controlling agency in England. We cannot predict what kind of agency India will wish to maintain in London once she has attained the status of full partnership in the Empire; but it must be very different from the existing arrangements.......in relation to India Parliament will, we imagine, observe the principles long adopted towards the British self-governing colonies, and will contract its interference and control in direct proportion to the expansion of self-government. As this grows, the volume of business in which Parliament will interfere will steadily shrink, and the occasions will be rarer on which the Secretary of State will have to exercise control and will need to be advised regarding its exercise. This points to a diminution in the establishment of the India Office and possibly to a modification in the Council of India. But here, again, it is a question not merely of the volume of work but also of the spirit in which it is conducted. In dealing with organizations which have become largely representative and in some degree responsible, the need for mutual understanding and action strengthened by consent will be continually enhanced.

Responsible Government in India would require change in 'the controlling agency in England'.

352. Again, while the growth of responsibility in India will lead to decreased intervention by the Secretary of State and Parliament in day-to-day administration, the fact that India's further political progress is to be determined by Parliament makes it imperative that Parliament should be better informed about and more keenly interested in Indian conditions. The decisions to be taken in the future must to some extent be controversial; different advice about them will be offered from different sources; and Parliament which is the final arbiter of India's destiny should be in a position to form a wise and independent judgement. For these reasons we have suggested means

Parliament—'final arbiter of India's destiny'

of improving its opportunities of exercising a well-informed control.

353. We conclude therefore that change in any one portion of the Indian polity will involve changes on parallel lines but by no means at an equal pace in the other portions; and we claim that our proposals satisfy this fundamental principle. We begin with a great extension of local self-government so as to train the electorates in the matters which they will best understand. Simultaneously we provide for a substantial measure of self-government in the Provinces and for better representation and more criticism in the Government of India and for fuller knowledge in Parliament. And we suggest machinery by means of which at regular stages the element of responsibility can be continuously enlarged and that of official control continuously diminished, in a way that will guarantee ordered progress and afford an answer to intermediate representations and agitation.

Extension of local self-government

Self-government in Provinces

'Better representation and more criticism in the Government of India'

II. Dyarchy

218. We propose . . . that in each Province the Executive Government should consist of two parts. One part would comprise the head of the Province and an Executive Council of two members. In all provinces the head of the Government would be known as Governor, though this common designation would not imply any equality of emoluments or status, both of which would continue to be regulated by the existing distinctions, which seem to us generally suitable. One of the two Executive Councillors would in practice be a European, qualified by long official experience, and the other would be an Indian. It has been urged that the latter should be an elected member of the Provincial Legislative Council. It is unreasonable that choice should be so limited. It should be open to the Governor to recommend whom he wishes. In making his nominations the Governor should be free to take into consideration the names of persons who had won distinction, whether in the Legislative Council or any other field. The Governor-

Governor

Executive Council

in-Council would have charge of the reserved subjects. The other part of the Government would consist of one member, or more than one member, according to the number and importance of the transferred subjects, chosen by the Governor from the elected members of the Legislative Council. They would be known as ministers. They would be members of the executive Government, but not members of the Executive Council; and they would be appointed for the lifetime of the Legislative Council and if re-elected to that body would be re-eligible for appointment as members of the executive. As we have said, they would not hold office at the will of the Legislature, but at that of their constituents. We make no recommendation in regard to pay. This is a matter which may be disposed of subsequently.

Reserved Subjects

Transferred Subjects

Ministers

219. The portfolios dealing with the transferred subjects would be committed to the ministers, and on these subjects the ministers together with the Governor would form the administration. On such subjects their decisions would be final, subject only to the Governor's advice and control. We do not contemplate that from the outset the Governor should occupy the position of a purely constitutional Governor who is bound to accept the decisions of his ministers. Our hope and intention is that the ministers will gladly avail themselves of the Governor's trained advice upon administrative questions, while on his part he will be willing to meet their wishes to the furthest possible extent in cases where he realizes that they have the support of popular opinion. We reserve to him a power of control, because we regard him as generally responsible for his administration, but we should expect him to refuse assent to the proposals of his ministers only when the consequences of acquiescence would clearly be serious. Also we do not think that he should accept without hesitation and discussion proposals which are clearly seen to be the result of inexperience. But we do not intend that he should be in a position to refuse assent at discretion to all his ministers' proposals. We

Governor's position in regard to Transferred Subjects

Instrument of Instructions for Governor

recommend that for the guidance of Governors in relation to their ministers and indeed on other matters also, an Instrument of Instructions be issued to them on appointment by the Secretary of State in Council.

220. There is another provision which we wish to make. The Governor may be himself unfamiliar with Indian conditions; and his Government, constituted as we have proposed, will contain only one European member. He will thus normally have only one member with official experience. In some provinces, where the Governor is himself an official and thoroughly familiar with the requirements of the Province, the advice and assistance of one official colleague may suffice But in other cases this will not be so. We propose, therefore, that the Governor should appoint, if he chooses, one or two additional members of his Government, as members without portfolio, for purposes of consultation and advice. It is true that it is always open to the Governor to seek the advice of any of his officials; but that is not the same thing as appointing them to be members of the Government with the status and authority attaching to such office. The additional members would still discharge the functions of, and draw the pay attached to their substantive appointments.

Members without portfolio

221. It is our intention that the Government thus composed and with this distribution of functions shall discharge them as one Government. It is highly desirable that the executive should cultivate the habit of associated deliberation and essential that it should present a united front to the outside. We would therefore suggest that as a general rule, it should deliberate as a whole, but there must certainly be occasions upon which the Governor will prefer to discuss a particular question with that part of his Government, directly responsible. It would therefore rest with him to decide whether to call a meeting of his Government, or of either part of it, though he would doubtless pay special attention to the advice

'One Government'

Joint deliberations of two parts of the Government

of the particular member or minister in charge of the subject under discussion. The actual decision on a transferred subject would be taken, after general discussion, by the Governor and the other members of his Executive Council, who would arrive at their decision in the manner provided in the existing statute. The additional members, if present, would take their share in the discussion, but would in no case take a part in the decision. At a meeting of the whole Government there would never be, in fact, any question of voting, for the decision would be left, as we have stated, to that part of the Government responsible for the particular subject involved But there are questions upon which the functions of the two portions of the Government will touch or overlap, such, for instance, as decisions on the budget or on many matters of administration. On these questions, in case of a difference of opinion between the ministers and the Executive Council, it will be the Governor who decides.

How to arrive at decisions?

No voting

Ultimate authority of the Governor

222. Let us now see the advantages of this transitional arrangement and anticipate criticisms. It has been urged with great force that, at the outset, it would be unfair to entrust the responsibility for the administration of any subject to men holding office at the will of the Legislative Council. The Legislative Council has had no experience of the power of dismissing ministers, or the results attending the exercise of such power. Nobody in India is yet familiar with the obligations imposed by tenure of office at the will of a representative assembly. It is only by actual experience that these lessons can be learned. But our scheme provides security of tenure for ministers for the life-time of the Council during the preliminary period, and therefore gives some time, which we think should be short, to prepare for the full exercise of responsibility. By the device, however, of appointing the ministers from the elected members of the Legislative Council and making their tenure of office conditional on the retention of their seats we have established at once some measure of responsibility, in the

Should administration be entrusted to Ministers responsible to the Legislature?

Safeguards incorporated in provisional scheme

Responsibility of Ministers to the Electorate

form of responsibility to their constituents, and have thus put an end to the condition of affairs in which those entrusted with the administration are wholly irresponsible to the constituents who elect the Legislative Council. By dividing the Government into what will in effect be two committees with different responsibilities we have ensured that members of the Government accountable to different authorities do not exercise the same responsibility for all subjects. By entrusting the transferred portfolios to the ministers, we have limited responsibility to the Indian electorate to those subjects in which we desire to give responsibility first. We have done this without now, or at any time, depriving the Indian element in the Government of responsibility for the reserved subjects. The fact that we are entrusting some functions of Government to ministers makes it impossible for us to contemplate the retention in any Province of an Executive Council of more than two members; but the reduction of the European element in the Council may be regarded as equivalent to an increase in the Indian element. At the same time, by the appointment of the additional members of the Government we have secured that the Governor shall have at his disposal ample official advice. The arrangement admits of adjustment to the different Provinces, because we contemplate that the number of transferred subjects, and therefore the number of ministers, may vary in each province. It is quite true that our plan involves some weakening of the unity of the executive and some departure from constitutional orthodoxy, but whenever and wherever we approach this problem of realizing responsibility at different times in different functions we find it impossible to adhere tightly to theoretical principles. It would be impossible to attain our object by a composite Government so composed that all its members should be equally responsible for all subjects. At the same time, it is necessary to secure that the whole executive should be capable of acting together. What we can do is to aim at minimizing causes of friction; and we have proposed arrangements that can be

Division of responsibility between two parts of the Government

Increase in the Indian element in Provincial Government

Peculiar character of the proposed Provincial Executive

worked by mutual forbearance and a strong common purpose. It is our intention that the decisions of the Government should be loyally defended by the entire Government, but that the ministers should feel responsibility for conforming to the wishes of their constituents. It is true that these two forces may pull different ways; but, though the analogy is clearly not complete, there are occasions when members of a Government, and indeed members of Parliament at Home, have to choose between loyalty to the Government and to their own constituents. All the members of the composite executives will be chosen by the Governor and his position in the administration will enable him to act as a strong unifying force. The habit of deliberating as a whole will also tend to preserve the unity of the Government, while the special responsibility of either part for the subjects committed to it will be recognised by the Legislative Council and the electorate. It seems to us, therefore, that, both from the point of view of capacity for development and from that of ensuring co-operation while developing responsibility, our arrangement is the best that can be devised for the transitional period.

Governor—'a strong unifying force'

A tentative arrangement for transitional period

223. Our proposals may strike some critics as complicated. But few constitutions, except those of a purely despotic character, can be described without some appearance of complication; and the course which we have deliberately chosen, and which is in its nature experimental and transitional, is relatively elaborate because it involves the temporary co-ordination of two different principles of government. If we had proposed to delay the concession of any responsibility at all until such time as we could give complete responsibility our scheme certainly would have had the minor merit of simplicity. But apart from our obligation to comply with the announcement of August 20, we feel that such a course would have subjected the mechanism of government, when the

Grant of responsibility cannot be delayed.

Responsibility combined with irresponsibility

change from irresponsibility to complete responsibility came, to so violent a shock that it might well have broken down. We were driven therefore first to devising some dualism in the executive; and secondly to providing for such a balance of power between the two portions as would permit the one portion to grow without at the same time disabling the other from discharging its very necessary functions of preserving continuity and safeguarding essentials. Given such difficult conditions we do not think that a less elaborate solution can readily be devised.

III. Communal Electorates

Muslims opposed to abolition of communal electorates

227.......we are brought face to face with the most difficult question which arises in connexion with elected assemblies--whether communal electorates are to be maintained. We may be told that this is a closed question, because the Muhammadans will never agree to any revision of the arrangement promised them by Lord Minto in 1906 and secured to them by the reforms of 1909. But we have felt bound to re-examine the question fully in the light of our new policy, and also because we have been pressed to extend the system of communal electorates in a variety of directions. This is no new problem...... There has hitherto been a weighty consensus of opinion that in a country like India no principle of representation other than bv interests is practically possible. Lord Dufferin held this view in 1888, and in 1892 Lord Lansdowne's Government wrote that: —"The representation of such a community upon such a scale as the Act permits can only be secured by providing that each important class shall have the opportunity of making its views known in Council by the mouth of some member specially acquainted with them." We note that in 1892 the small size of the Councils was reckoned as a factor in the decision and that the contrary view was not without its exponents; but we feel no doubt that Lord Minto's Government followed the predominant opinion when in 1908 they pressed for an important extension of the communal

Policy of Lord Lansdowne

Policy of Lord Minto

principle. Thus we have had to reckon not only with the settled existence of the system, but with a large volume of weighty opinion that no other method is feasible.

Arguments in favour of communal electorates

228. The crucial test to which, as we conceive, all proposals should be brought is whether they will or will not help to carry India towards responsible government. Some persons hold that for a people, such as they deem those of India to be, so divided by race, religion and caste as to be unable to consider the interests of any but their own section, a system of communal and class representation is not merely inevitable, but is actually best. They maintain that it evokes and applies the principle of democracy over the widest range over which it is actually alive at all by appealing to the instincts which are strongest; and that we must hope to develop the finer, which are also at present the weaker, instincts by using the forces that really count. According to this theory communal representation is an inevitable, and even a healthy, stage in the development of a non-political people. We find indeed that those who take this view are prepared to apply their principles on a scale previously unknown, and to devise elaborate systems of class or religious electorates into which all possible interests will be deftly fitted. But when we consider what responsible government implies, and how it was developed in the world, we cannot take this view. We find it in its earliest beginnings resting on an effective sense of the common interests, a bond compounded of community of race, religion and language. In the earlier from which it assumed in Europe it appeared only when the territorial principle had vanquished the tribal principle, and blood and religion had ceased to assert a rival claim with the State to a citizen's allegiance; and throughout its development in Western countries, even in cases where special reasons to the contrary were present, it has rested consistently on the same root principle. The solitary examples that we can discover of the oppos-

Communal electorates are opposed to the teaching of History.

ing principle are those of Austria, a few of the smaller German states, and Cyprus. It is hardly necessary to explain why we dismiss these as irrelevant or unconvincing. We conclude unhesitatingly that the history of self-government among the nations who developed it, and spread it through the world, is decisively against the admission by the State of any divided allegiance; against the State's arranging its members in any way which encourages them to think of themselves primarily as citizens of any smaller unit than itself.

Communal electorates perpetuate class divisions.

229. Indian lovers of their country would be the first to admit that India generally has not yet acquired the citizen spirit, and if we are really to lead her to self-government we must do all that we possibly can to call it forth in her people. Division by creeds and classes means the creation of political camps organized against each other, and teaches men to think as partisans and not as citizens; and it is difficult to see how the change from this system to national representation is ever to occur. The British Government is often accused of dividing men in order to govern them. But if it unnecessarily divides them at the very moment when it professes to start them on the road to governing themselves it will find it difficult to meet the charge of being hypocritical or short-sighted.

Communal electorates stereotype existing relations between communities.

230. There is a another important point. A minority which is given special representation owing to its weak and backward state is positively encouraged to settle down into a feeling of satisfied security; it is under no inducement to educate and qualify itself to make good the ground which it has lost compared with the stronger majority. On the other hand, the latter will be tempted to feel that they have done all they need do for their weaker fellow countrymen, and that they are free to use their power for their own purposes. The give-and-take which is the essence of political life is lacking. There is no inducement to the one side to forbear, or to the other

to exert itself. The communal system stereotypes existing relations.

231. We regard any system of communal electorates, therefore, as a very serious hindrance to the development of the self-governing principle The evils of any extension of the system are plain Already communal representation has been actually proposed for the benefit of a majority community in Madras. At the same time we must face the hard facts. The Muhammadans were given special representation with separate electorates in 1909. The Hindus' acquiescence is embodied in the present agreement between the political leaders of the two communities[1]. The Muhammadans regard these as settled facts, and any attempt to go back on them would rouse a storm of bitter protest and put a severe strain on the loyalty of a community which has behaved with conspicuous loyalty during a period of very great difficulty, and which we know to be feeling no small anxiety for its own welfare under a system of popular government. The Muhammadans regard separate representation and communal electorates as their only adequate safeguards. But apart from a pledge which we must honour until we are released from it, we are bound to see that the community secures proper representation in the new Councils. How can we say to them that we regard the decision of 1909 as mistaken, that its retention is incompatible with progress towards responsible government, that its reversal will eventually be to their benefit; and that for these reasons we have decided to go back on it? Much as we regret the necessity, we are convinced that so far as Muhammadans at all events are concerned the present system must be maintained until conditions alter, even at the price of slower progress towards the realization of a common citizenship. But we can see no reason to set up communal representation for

Muslim case for communal electorates

'Pledge which we must honour'

[1] The reference is to the Lucknow Pact. See *Indian Constitutional Documents*, Vol. II.

Muhammadans in any province where they form a majority of the voters.

Demands of other communities for separate electorates

232. We have been pressed to extend the concession to other communities. Some have based their claim on their backward, others on their advanced, condition. Thus, the Sikhs in the Punjab, the non-Brahmans in Madras (although in that presidency these actually constitute a majority), the Indian Christians, the Anglo-Indians, the Europeans, and the Lingayat community in Bombay have all asked for communal representation. The large landowning classes also generally desire representation in an electorate of their own. Now, our decision to maintain separate electorates for Muhammadans makes it difficult for us to resist these other claims; but, as we have said, in the case of the Muhammadans we have felt ourselves bound by promises given and renewed by Secretaries of State and Viceroys and in their respect at all events our recommendation involves no new departure. Any general extension of the communal system, however, would only encourage still further demands, and would in our deliberate opinion be fatal to that development of representation upon the national basis on which alone a system of responsible government can possibly be rooted. At the same time, we feel that there is one community from whom it is inexpedient to withhold the concession. The Sikhs in the Punjab are a distinct and important people; they supply a gallant and valuable element to the Indian Army; but they are everywhere in a minority, and experience has shown that they go virtually unrepresented. To the Sikhs, therefore, and to them alone, we propose to extend the system already adopted in the case of Muhammadans.

Case of the Sikhs

Nomination for representation of minorities

For the representation of other minorities we should prefer nomination. Even in the case of the general European community, whose material interests in the country are out of all proportion to their numerical strength and on whose behalf it may be

argued that no departure from principle is involved, inasmuch as unlike all other communities named they are not an integral part of the population of India, we prefer to rely upon nomination. Special electorates will no doubt be required for the representation of the planting and mining interests, for the chambers of commerce, and possibly also for the universities; but we desire that the number of such electorates should be as restricted as possible, and that minority interests should, where necessary, be represented not by class or interest electorates, but by nomination. Where the great landowners form a distinct class in any province we think that there will be a case for giving them an electorate of their own. The anomaly involved in the presence of nominated members in a Council to which we are giving some responsible powers must, we think, be accepted as one of the necessary illogicalities attendant on a transitional period. Such nominations are made for a representative purpose and can be made in such a way as to secure representation. Nomination has in our eyes the great advantage over the alternative of extending the class or communal system that it can be more easily abolished when the necessity for it ceases. We look to the desire of the communities represented by nominated members to see their representatives in Council placed upon the same footing as those of other communities to help us in securing the extension of the territorial principle of representation wherever possible. . . .

Why nomination is preferred to extension of communal system

IV. Devolution To Provincial Governments

200. We saw that the existing financial relations between the Central and Provincial Governments must be changed if the popular principle in government is to have fair play in the provinces. The settlements by which the Indian and Provincial Governments share the proceeds of certain heads of revenues are based primarily on the estimated needs of the provinces and the Government of India disposes of the surplus. This system necessarily involves control and interference by the Indian

Necessity of financial devolution

Government in provincial matters. An arrangement which has on the whole worked successfully between two official Governments would be quite impossible between a popular and an official Government. Our first aim has therefore been to find some means of entirely separating the resources of the Central and Provincial Governments.

New basis of division of financial resources between Centre and Provinces

201. We start with a change of standpoint If provincial autonomy is to mean anything real clearly the provinces must not be dependent on the Indian Government for the means of provincial developments. Existing settlements do indeed provide for ordinary growth of expenditure, but for any large and costly innovations Provincial Governments depend on doles out of the Indian surplus. Our idea is that an estimate should first be made of the scale of expenditure required for the upkeep and development of the services which clearly appertain to the Indian sphere; that resources with which to meet this expenditure should be secured to the Indian Government; and that all other revenues should then be handed over to the Provincial Governments, which will thenceforth be held wholly responsible for the development of all provincial services. This, however, merely means that the existing resources will be distributed on a different basis, and does not get over the difficulty of giving to the Central and Provincial Governments entirely separate resources. Let us see how this is to be done.

Complete separation of revenues desirable

202. Almost everyone is agreed that a complete separation is in theory desirable. Such differences of opinion as we have met with have mostly been confined to the possibility of effecting it in practice. It has been argued for instance that it would be unwise to narrow the basis on which both the central and provincial fiscal systems are based. Some of the revenues in India, and in particular the land revenue and excise, have an element of precariousness; and the system of divided heads, with all its drawbacks, has the undeniable advantage that it spreads the risks. This objection will, however, be met if, as we

claim, our proposed distribution gives both the Indian and the Provincial Governments a sufficient measure of security. Again we have been told that the complete segregation of the Government of India in financial matters will lower its authority. This argument applies to the whole subject of decentralization and provincial autonomy It is not necessary for us to meet it further. Our whole scheme must be even and well balanced, and it would be ridiculous to introduce wide measures of administrative and legislative devolution and at the same time to retain a centralised system of finance.

Question of lowering authority of Government of India

203. There are two main difficulties about complete separation How are we to dispose of the two most important heads which are at present divided—land revenue and income-tax—and how are we to supplement the yield of the Indian heads of revenue in order to make good the needs of the Central Government? At present the heads which are divided in all or some of the provinces are:—land-revenue, stamps, excise, income-tax and irrigation. About stamps and excise there is no trouble. We intend that the revenue from the stamp duty should be discriminated under the already well-marked sub-heads *General* and *Judicial*; and that the former should be made an Indian and the latter a provincial receipt. This arrangement will preserve uniformity in the case of commercial stamps where it is obviously desirable to avoid discrepancies of rates; and it will also give the provinces a free hand in dealing with Court-fee stamps, and thus provide them with an additional means of augmenting their resources. Excise is at present entirely a provincial head in Bombay, Bengal and Assam and we see no valid reason why it should not now be made provincial throughout India. At this stage the difficulties begin. Land revenue, which is by far the biggest head of all, is at present equally shared between the Indian and all the Provincial Governments, except that Burma gets rather more than one-half and the United Provinces gets rather less. Now land revenue

Heads of revenue which are divided

Proposals about division of heads of revenue between Centre and Provinces

assessment and collection is so intimately concerned with the whole administration in rural areas that the advantages of making it a provincial receipt are obvious. . . . We propose . . . to make land-revenue, together with irrigation, wholly provincial receipts. It follows that the provinces will become entirely liable for expenditure in famine relief and protective irrigation works. . . . The one remaining head is income-tax. We see too very strong reasons for making this an Indian receipt. . . . To sum up; we propose to retain the Indian and provincial heads as at present, but to add to the former income-tax and general stamps, and to the latter land-revenue, irrigation, excise, and judicial stamps. No heads will then remain divided.

Provincial budgets and balances

208. It follows from our proposed separation of revenues that there will in future be also a complete separation of the central and provincial budgets; and that the former will henceforward include only the direct transactions of the Government of India, and not as at present those of the provinces also. It likewise follows that there will be no more earmarking of any portion of provincial balances; and that portions previously earmarked will be available for general purposes.

Legislative devolution

Government of India should have 'a general over-riding power of legislation'.

212 These measures will give Provincial Governments the liberty of financial action which is indispensable; but the provinces must also be secured against any unnecessary interference by the Government of India in the spheres of legislative and administrative business. It is our intention to reserve to the Government of India a general over-riding power of legislation for the discharge of all functions which it will have to perform. It should be enabled under this power to intervene in any province for the protection and enforcement of the interests for which it is responsible; to legislate on any provincial matter in respect of which uniformity of legislation is desirable either for the whole of India

or for any two or more provinces; and to pass legislation which may be adopted either *simpliciter* or with modifications by any province which may wish to make use of it. We think that the Government of India must be the sole judge of the propriety of any legislation which it may undertake under any one of these categories, and that its competence so to legislate should not be open to challenge in the courts. Subject to these reservations we intend that within the field which may be marked off for provincial legislative control the sole legislative power shall rest with the provincial Legislatures. The precise method by which this should be effected is a matter to be considered when the necessary statute is drafted, and we reserve our final opinion upon it. There are advantages in a statutory demarcation of powers such as is found in some federal constitutions, but we feel that if this is to leave the validity of the acts to be challenged in the courts on the ground of their being in excess of the powers of the particular Legislature by which they are passed, we should be subjecting every Government in the country to an almost intolerable harassment. Moreover, in India where the Central Government must retain large responsibilities, as for defence and law and order, a statutory limitation upon its legislative functions may be inexpedient. We have already referred to the fact that there has been growing up in India for some time a convention which by now has acquired no little strength to the effect that the Central Government shall not without strong reason legislate in the internal affairs of provinces. We think therefore that it may be better, instead of attempting to bar the legislative power of the Government of India in certain spheres of provincial business, to leave it to be settled as a matter of constitutional practice that the Central Government will not interfere in provincial matters unless the interests for which it is itself responsible are directly affected.

Legislative power of Provincial Legislature

There should be no statutory demarcation of legislative powers between Centre and Provinces.

Division of legislative power between Centre and Provinces should be left to convention.

213. The question of restraining the Central Government from administrative interference in the

Administrative devolution:

provinces is more difficult. We recognize that, in so far as the Provincial Governments of the future will still remain partly bureaucratic in character, there can be no logical reason for relaxing the control of superior official authority over them, nor indeed would any general relaxation be approved by Indian opinion; and that in this respect the utmost that can be justified is such modification of present methods of control as aims at getting rid of interference in minor matters, which might very well be left to the decision of the authority which is most closely acquainted with the facts. It is, however, in relation to Provincial Governments in their popular aspects that serious difficulties present themselves. So long as the Government of India itself is predominantly official in character and therefore, remains amenable to the Secretary of State, its interference in any matters normally falling within the range of popular bodies in the provinces involves a clash of principles which cannot fail to engender some heat, and the scope of which it is on all grounds desirable to keep within very closely defined bounds. At the same time we perceive that there are many matters which, taken in bulk, may reasonably be regarded as fitted for administration by popular bodies, but which have aspects that cannot fail to be of intimate concern to the Government which is responsible for the security or good administration of the whole country.

(1) Provincial Governments in their bureaucratic aspects

(2) Provincial Governments in their popular aspects

3. GOVERNMENT OF INDIA ON MONTFORD REPORT[1], 1919.

Reception of the Report by

(1) Non-official Europeans

(2) 'extreme' Indians

The Report itself was published in India on July 8, 1918; and you will expect us to give you as clear an impression as we can of its reception. The non-official European community took some time to form their opinions on proposals so intricate and so far-reaching. Indian opinion declared itself more rapidly, and from the first there ensued a clear division between the moderate and extreme political parties. The former declared definitely for the Report, with

[1] Despatch to Secretary of State, March 5, 1919.

certain reservations; the latter against it. The strongest expression of the latter view occurred in a letter published even before the Report appeared, urging that anything which originates with foreigners should be rejected as violating the principle of self-determination. The most advanced Bengal politicians adopted an attitude of uncompromising opposition. In Madras the recognised leaders of the advanced party had some difficulty in preventing the special conference which was held to consider the proposals from taking the same line. But the more responsible section of the party declared that, while the proposals were disappointing and unsatisfactory and required radical modifications before they could be held to constitute any substantial step towards responsible government, effort should be concentrated on obtaining such modifications rather than on the wholesale rejection of the scheme. The attitude of the moderate party, which we believe includes the ablest and most respected Indian opinion, was far more favourable to the Report. They welcomed its proposals as a real and substantial step towards the progressive realisation of responsible government in the provinces, and the modifications which they urged were, with the exception of those affecting the Government of India, concerned with the details rather than the essentials of the scheme. Opinion of this sort is fairly represented by the resolutions recorded by the majority of the non-official members of the Indian Legislative Council. . . . The independent line adopted by the moderates had for some time a restraining influence on the other party The tendency which had at first been apparent to flout temperate opinion gave place to a desire for conciliation; and at the last moment efforts were made to induce the moderates to attend the special Congress held at Bombay towards the end of August to consider the proposals. These efforts failed, but the abstention of the majority of moderates was not without effect. The leaders of the special Congress made an appeal to moderates throughout the country to rally to the national association. There was no

Bengal

Madras

(3) 'Moderate' Indians

Indian Legislative Council

Congress

legislature complete control over the budget, and to make the Governor a purely constitutional Governor in relation to his ministers. As these demands, if satisfied, would give them complete control over legislation and finance, it makes little difference whether they claim complete responsible government at once or after a limited period. On the other hand the moderates accept the principle of dualism in government, and in the provincial sphere they merely press for such changes in detail as equality of status between councillors and ministers, reconsideration of the proposal to appoint additional members without portfolios, the selection of heads of provinces from the ranks of public men in England, complete provincial autonomy in respect of transferred subjects, and the largest possible extension of the list of transferred subjects. Another phase of opinion, however, is represented by the memorial . . . from certain land-holding members of the Indian Legislative Council who ask that progress should partly take the form of converting the leading zamindars into independent chiefs: a proposal clearly not in keeping with the principles set forth by His Majesty's Government. The great majority of the landholding class are more conservative. They have said little in public and are doubtful of their own preparedness to take their proper place in the forward movement. But they are unmistakably proud that India has been offered this signal mark of confidence, and in no sense hostile.

Demands of Zamindars

The non-official European community was at first disposed to question the wisdom of raising the subject of reforms during the war, but with the change in the situation in Europe this criticism lost much of its force. There is dissatisfaction with the proposal that the community, which forms the only element in the population accustomed to the working of responsible government, should not elect its own representatives on the provincial councils. They claim a separate electorate and representation in proportion to their importance rather than their numerical strength; and they doubt whether even

Demands of non-official Europeans

this will sufficiently secure the interests of trade and industry. They think that the scheme as a whole is ingenious but too complex; and they fear that it may result in the transfer of power to the advanced political section to the detriment of the masses, who have no desire for any change in the system of government They also dwell on the difficulty of presenting their opinion until the proposals in respect of electorates and the division of functions have been completed.

Official opinion

Official opinion can be gauged only from individual deliverances. It is generally critical of the scheme; but we desire to take this opportunity of controverting the suggestion that has found some currency in this country that the criticism proceeds from a purely selfish point of view. Such a view is unfair to a body of men who have served India faithfully and have its real welfare strongly at heart. There is no justification for the charge that searching criticism of the particular proposals in the Report implies any opposition to the underlying policy. The difficulties of the problem loom large with those on whom the burden of administration now rests; and it is, we believe, their pride in and affection for their work which has made them the most anxious critics of far-reaching innovations. The permanent British official in India has not as a rule taken any part in the democratic institutions of his own land, and is frankly sceptical of their suitability to an eastern country. By the nature of his work, he comes into touch with the vast masses of the people, who have no political aspirations, rather than with the more advanced thinkers. He apprehends that the former will suffer from the administrative inexperience of the latter; and he is anxious for safeguards which will protect them, while at the same time securing the standards of thoroughness and impartiality in public business to which he has been trained. By all the best elements in this class, the declaration of August, 1917, is accepted, and the need for advance is admitted; but the proposals of the Report are

Why officials criticise the Reform scheme

Views of the 'best elements' among officials

commonly criticised as going beyond the present needs of India.

The cautions of the official mind are crystallized in the opinions of the Local Governments. On their first perusal it must have disappointed the authors of the Report to find that the Provincial Governments had devoted themselves so largely to destructive criticism. We do not think, however, that this was unnatural. Their opportunities for constructive work had come earlier; and their proposals, both individually and at the conference of Heads of provinces which met His Excellency and yourself in January, 1918, had been among the materials on which the conclusions embodied in the Report were based. They might thus not unreasonably feel that there was no further occasion for them to set out alternative schemes; and that the best service they could render us was to apply themselves to a vigorous and searching examination of the Report in detail. In this task, whether we agree with them or not, we must recognize the weight of their influence. The Local Governments are repositories of practical first-hand experience of the working of the administrative machine. They know its limits and its possibilities, and the attitude of different sections of the people towards it. They can speak with intimate knowledge upon much that in the Report had to be dealt with on very general considerations. We feel that we owe all respect to their criticisms in detail . . . Their great value has been, not to throw doubt on the principles which we accept and which their examination has in no wise shaken, but to make us pause and remove defects which such examination reveals . . .

Opinions of Local Governments

Value of the criticism of Local Governments

Lastly we come to a statement of our own position. When these questions of constitutional reform were under consideration last year the main responsibility rested upon the two authors of the Report. The members of the Government of India were indeed kept in close touch with the deliberations and

Opinion of Government of India

no important conclusions were arrived at without reference to them. They have also in their despatch no. 6, dated May 31, 1918, cordially supported the general policy which the Report embodies. We take our stand on that despatch. We are convinced that the time has come for the definition of our goal in India; and we can conceive no other goal, consistent with the ideals of British history, except that the people of India, helped and guided by us, should learn to govern themselves. Whether their national life will flow into the precise constitutional moulds to which Englishmen by tradition are attached, or whether—as we think equally possible—it will ultimately work out for itself free institutions of a distinctive type, time alone can tell. Nor need we speculate whether India is going to borrow our history Our clear duty is to put her into the way which we believe to be the best, and to allow the character of the nation, as it grows and is welded by experience and trial, to deflect our present methods gradually and intelligently towards ideals which it will adopt as its own. We regard it as beyond question that the first stage of advance must be a generous one, undertaken at the earliest possible moment. To postpone it now would be a confession of mistrust of our own work, and would alienate those classes in the country to whom we must look for the leadership of the new movement. We should particularly deplore any argument for delay, based on disclosures of revolutionary conspiracies which are utterly foreign to the real life of the people, and confined to an inconsiderable section. We believe indeed that, while it is necessary to deal firmly with crime arising out of these conspiracies, repressive measures, unless coupled with definite steps in the direction of political advance, can provide only a temporary remedy. There probably would be no point of time at which we should not feel that something still remained to be done by way of preparation for the beginnings of popular administration; but we must trust to perfect our work in co-operation with Indian public men, and we must be content to

Indians should be taught to govern themselves.

'Generous' concessions required

No ground for delay

believe that we have laid our foundations well, and that they will bear the new superstructure. In all this we feel that we are moving with a spirit which is stronger than our calculations; and we accept whatever lies ahead. But that consideration only adds to the weight of responsibility which lies upon us when we come to advise upon the details of the plan of advance. To the form of provincial government which the Report sets up as the main vehicle of progress we have nothing to oppose; we have seen no alternative which in any way competes with it. But we can best fulfil our task and discharge our responsibility by helping you to develop the new system into a working proposition. It is a novelty in constitutions; and none of us can prophesy the manner of its growth. But there are to our minds certain universal tests of administrative machinery: its smoothness or friction in working, its burdensomeness on the people or the reverse, its educative value, and its capacity for further development. To every detail of the scheme therefore we have applied these tests, and our advice is based on its response to them. It has been no purpose of ours either to whittle down the scheme or to expand it. We take the scheme in the Report as one which, in all essentials, has our full adherence; and our sole aim has been to translate it into a working plan which, while free from obvious defects, will be in accord with the policy of His Majesty's Government.

Indian co-operation expected

Dyarchy acceptable to Government of India

'Tests of administrative machinery'

4. SIMON COMMISSION ON DIFFERENCES BETWEEN MONT-FORD REPORT AND GOVERNMENT OF INDIA ACT, 1919.

140. It is important to bear in mind that the recommendations of the Montagu-Chelmsford Report were not in all respects adopted and carried out by the sections of the Government of India Act, 1919. The Bill, as introduced, represented the result of discussions which had taken place between the Government of India, the Provincial Governments,

Mont-Ford Report modified as a result of discussions between Government of India, Provincial Governments and 'Home' Government

and the Imperial Government. In the course of its passage through Parliament it was amended in some material respects in accordance with the recommendations of the Joint Select Committee of both Houses of Parliament to which it was referred, of which Committee Mr. Montagu was an influential member. For example, the Report devised a plan by which the Government of India could secure the passage of legislative measures which it regarded as essential, notwithstanding the opposition of the majority of the Legislative Assembly, by carrying its Bill through an Upper House in which there was an official majority. The Viceroy's assent to a measure so carried through the Upper House nullified the effect of its rejection by the Lower House . . . The Lower House would have enjoyed increased "opportunities of influencing Government," but the authority of the Government of India "in essential matters" nevertheless would remain "indisputable." It was manifestly an important alteration for the Joint Select Committee to modify the scheme, as it did, by making the assent of the Legislative Assembly essential to the passage of all legislation, subject to the power of the Governor-General in case of emergency to place a new law upon the Statute Book, by mere certification, with or without the assent of the Council of State, and without any concurrence from the other branch of the Legislature. The Act of 1919 contained other departures from the scheme of the Report. We will give two further examples. In the realm of provincial government, Mr. Montagu and Lord Chelmsford had proposed that if the Provincial Government found it impossible to carry through the unicameral provincial council legislation of a certain character which the Governor deemed essential, the Bill might be referred to a Grand Committee constituted for the purpose, composed in part of members selected by the provincial council, but with a nominated majority. The view of this Grand Committee would ultimately prevail, even though the provincial legislature remained obdurate. All this was rejected by the Joint Select Committee on the ground that it was

Procedure of legislation changed by Joint Select Committee:

(i) Central Legislature

(ii) Provincial Legislature

better, in cases where the ultimate responsibility rested with the Governor and his Executive Council, for the overriding of the legislature to take place, without disguise, by the direct method of certification. It will be observed that this change made by the Joint Select Committee in the provincial sphere is analogous to the departure from the scheme of the Joint Report, described in the central sphere.

Procedure regarding budget (i) suggested by the Report

A second illustration, which is of great importance to show how widely the Government of India Act departed in some respects from the recommendations of the Joint Report, is concerned with the budget. Mr. Montagu and Lord Chelmsford laid it down that "the budget will be introduced in the Legislative Assembly, but the Assembly will not vote it. Resolutions upon budget matters and upon all other questions, whether moved in the Assembly or in the Council of State, will continue to be advisory in character."

(ii) modified by Joint Select Committee

The Government of India Bill was introduced into Parliament with a clause drafted to correspond with this recommendation, but the Joint Select Committee altered this, and in its Report to the two Houses of Parliament pointed attention to the insertion of "a new provision for the submission of the Indian Budget to the vote of the Legislative Assembly." These matters may now be regarded as of little more than historic interest, but we think that it is not without importance to bear in mind that the Act of 1919 did not in these, and some other respects follow the plan of the Joint Report Mr. Montagu, as we have already said, was a member of the Joint Select Committee, and, as far as we know, concurred in the changes.

But in most respects the scheme of the Montagu-Chelmsford Report was translated into law. . . .

5. GOVERNMENT OF INDIA ACT[1], 1919.

I. Extracts from Act.

Preamble

Political goal of India

Whereas it is the declared policy of Parliament to provide for the increasing association of Indians in every branch of Indian administration, and for the gradual development of self-governing institutions, with a view to the progressive realization of responsible government in British India as an integral part of the empire:

Goal to be reached by 'successive stages'

And whereas progress in giving effect to this policy can only be achieved by successive stages, and it is expedient that substantial steps in this direction should now be taken:

Discretion and responsibility of Parliament

And whereas the time and manner of each advance can be determined only by Parliament, upon whom responsibility lies for the welfare and advancement of the Indian peoples:

Progress to depend on Indian co-operation

And whereas the action of Parliament in such matters must be guided by the co-operation received from those on whom new opportunities of service will be conferred, and by the extent to which it is found that confidence can be reposed in their sense of responsibility:

Concession to Provincial Governments

And whereas concurrently with the gradual development of self-governing institutions in the provinces of India it is expedient to give to those Provinces in provincial matters the largest measure of independence of the Government of India, which

[1] 9 & 10 Geo 5, c. 101.

"The Principal Act was the Government of India Act of 1915. It was called 'The Government of India Acts of 1915 and 1916' after the amending Act of 1916 was passed. The Act embodying the Reform Proposals is called 'The Government of India Act, 1919'. The principal Act of 1915 as amended by the subsequent amending Acts of 1916 and 1919 is to be cited simply as 'The Government of India Act'. See Sec. 47 of the Government of India Act, 1919".—P. Mukherji, *The Indian Constitution,* p. 14.

is compatible with the due discharge by the latter of its own responsibilities:

Be it therefore enacted as follows:

PART I

LOCAL GOVERNMENTS

Classification of Central and Provincial Subjects

1. (1) Provision may be made by rules under the Government of India Act, 1915, as amended by the Government of India (Amendment) Act, 1916 (which Act so amended is in this Act referred to as 'the Principal Act'):

Central and Provincial subjects

(*a*) for the classification of subjects, in relation to the functions of government, as central and provincial subjects, for the purpose of distinguishing the functions of Local Governments and Local Legislatures from the functions of the Governor-General in Council and the Indian Legislature;

Devolution of authority to Local Governments

(*b*) for the devolution of authority in respect of provincial subjects to Local Governments, and for the allocation of revenues or other moneys to those Governments;

'Agency' functions of Local Governments

(*c*) for the use under the authority of the Governor-General in Council of the agency of Local Governments in relation to central subjects, in so far as such agency may be found convenient, and for determining the financial conditions of such agency; and

'Transferred' subjects

(*d*) for the transfer from among the provincial subjects of subjects (in this Act referred to as 'transferred subjects') to the administration of the Governor acting with Ministers appointed under this Act, and for the allocation of revenues or moneys for the purpose of such administration.

(2) Without prejudice to the generality of the foregoing powers, rules made for the above-mentioned purposes may—

Provision for making rules on different matters

(*i*) regulate the extent and conditions of such devolution, allocation and transfer;

(*ii*) provide for fixing the contribution payable by Local Governments to the Governor-General in Council, and making such contributions a first charge on allocated revenues or moneys;

(*iii*) provide for constituting a finance department in any province, and regulating the functions of that department;

(*iv*) provide for regulating the exercise of the authority vested in the Local Government of a province over members of the public Service therein;

(*v*) provide for the settlement of doubts arising as to whether any matter does or does not relate to a provincial subject or a transferred subject, and for the treatment of matters which affect both a transferred subject and a subject which is not transferred; and

(*vi*) make such consequential and supplemental provisions as appear necessary or expedient,

Provided that, without prejudice to any general power of revoking or altering rules under the Principal Act, the rules shall not authorise the revocation or suspension of the transfer of any subject except with the sanction of the Secretary of State in Council.

'Superintendence, direction and control' of Governor-General in Council

(3) The powers of superintendence, direction and control over Local Governments vested in the Governor-General in Council under the Principal Act shall, in relation to transferred subjects, be exercised only for such purposes as may be specified in rules made under that Act, but the Governor-General in Council shall be the sole judge as to whether the purpose of the exercise of such powers in any particular case comes within the purposes so specified.

(4) The expressions 'central subjects' and 'provincial subjects' as used in this Act mean subjects so classified under the rules.

Provincial subjects, other than transferred subjects, are in this Act referred to as 'reserved subjects.' 'Reserved' subjects

Revised System of Local Government in certain Provinces

3. (1) The Presidencies of Fort William in Bengal, Fort St. George, and Bombay, and the provinces known as the United Provinces, the Punjab, Bihar and Orissa, the Central Provinces, and Assam, shall each be governed, in relation to reserved subjects, by a Governor in Council, and in relation to transferred subjects (save as otherwise provided by this Act) by the Governor acting with Ministers appointed under this Act. Governors' Provinces Governor in Council Governor acting with Ministers

The said Presidencies and provinces are in this Act referred to as 'Governor's provinces' and two first-named presidencies are in this Act referred to as the presidencies of Bengal and Madras.

(2) The provisions of sections forty-six to fifty-one of the Principal Act, as amended by this Act, shall apply to the United Provinces, the Punjab, Bihar and Orissa, the Central Provinces, and Assam, as they apply to the Presidencies of Bengal, Madras, and Bombay : Provided that the Governors of the said Provinces shall be appointed after consultation with the Governor-General. Appointment of Governors of certain Provinces

Appointment of Ministers and Council Secretaries

(4). (1) The Governor of a Governor's province may, by notification, appoint Ministers, not being members of his Executive Council or other officials, to administer transferred subjects, and any Ministers so appointed shall hold office during his pleasure. Minister to hold office during Governor's pleasure

There may be paid to any Minister so appointed in any province the same salary as is payable to a member of the Executive Council in that province, unless a smaller salary is provided by vote of the Legislative Council of the province.

(2) No Minister shall hold office for a longer period than six months, unless he is or becomes an elected member of the local legislature.

Relation between Governor and Ministers

(3) In relation to transferred subjects, the Governor shall be guided by the advice of his Ministers, unless he sees sufficient cause to dissent from their opinion, in which case he may require action to be taken otherwise than in accordance with that advice: Provided that rules may be made under the Principal Act for the temporary administration of a transferred subject where, in cases of emergency, owing to a vacancy, there is no Minister in charge of the subject, by such authority and in such manner as may be prescribed by the rules.

'Temporary administration' of transferred subjects in emergencies

Qualification of Members of Local Executive Councils

5. (1) The provision in section forty-seven of the Principal Act, that two of the members of the Executive Council of the Governor of a province must have been for at least twelve years in the service of the Crown in India, shall have effect as though 'one' were substituted for 'two', and the provision in that section that the Commander-in-Chief of His Majesty's Forces in India, if resident at Calcutta, Madras, or Bombay, shall, during his continuance there, be a member of the Governor's Council, shall cease to have effect.

Commander-in-Chief not to be member of Governor's Council

(2) Provision may be made by rules under the Principal Act as to the qualifications to be required in respect of members of the Executive Council of the Governor of a province in any case where such provision is not made by section forty-seven of the Principal Act as amended by this section.

Qualifications of Executive Councillors

Business of Governor in Council and Governor with Ministers

6. (1) All orders and other proceedings of the Government of a Governor's province shall be expressed to be made by the Government of the province,

and shall be authenticated as the Governor may by rule direct, so, however, that provision shall be made by rule for distinguishing orders and other proceedings relating to transferred subjects from other orders and proceedings.

Orders and proceedings authenticated as aforesaid shall not be called into question in any legal proceedings on the ground that they were not duly made by the Government of the province.

(2) The Governor may make rules and orders for the more convenient transaction of business in his Executive Council and with his Ministers, and every order made or act done in accordance with those rules and orders shall be treated as being the order or the act of the Government of the province.

Governor may make rules 'for the more convenient transaction of business'.

The Governor may also make rules and orders for regulating the relations between the Executive Council and his Ministers for the purpose of the transaction of the business of the Local Government:

Provided that any rules and orders made for the purposes specified in this section which are repugnant to the provisions of any rules made under the Principal Act as amended by this Act shall, to the extent of that repugnancy, but not otherwise, be void.

Composition of Governors' Legislative Councils

7. (1) There shall be a Legislative Council in every Governor's province, which shall consist of the members of the Executive Council and of members nominated or elected as provided by this Act.

The Governor shall not be a member of the Legislative Council, but shall have the right of addressing the Council, and may for that purpose require the attendance of its members.

(2) The number of members of the Governors' Legislative Councils shall be in accordance with the table set out in the First Schedule to this Act; and of the members of each Council not more than twenty

Proportion of official and elected members

per cent. shall be official members, and at least seventy per cent. shall be elected members.

Provided that

(*a*) subject to the maintenance of the above proportions, rules under the Principal Act may provide for increasing the number of members of any Council, as specified in that Schedule; and

Provisions for increasing number of members of Council

(*b*) the Governor may, for the purposes of any Bill introduced or proposed to be introduced in his Legislative Council, nominate, in the case of Assam one person, and in the case of other provinces not more than two persons, having special knowledge or experience of the subject-matter of the Bill, and those persons shall, in relation to the Bill, have for the period for which they are nominated all the rights of members of the Council, and shall be in addition to the members above referred to; and

Berar

(*c*) members nominated to the Legislative Council of the Central Provinces by the Governor as the result of elections held in the Assigned Districts of Berar shall be deemed to be elected members of the Legislative Council of the Central Provinces.

(3) The powers of a Governor's Legislative Council may be exercised notwithstanding any vacancy in the Council.

(4) Subject as aforesaid, provision may be made by rules under the Principal Act as to

Nominated members

(*a*) the term of office of nominated members of Governors' Legislative Councils, and the manner of filling casual vacancies occurring by reason of absence of members from India, inability to attend to duty, death, acceptance of office, resignation duly accepted, or otherwise; and

(*b*) the conditions under which and manner in which persons may be nominated as members of Governors' Legislative Councils; and

(*c*) the qualification of electors, the constitution of constituencies, and the method of election for Governors' Legislative Councils, including the number of members to be elected by communal and other electorates, and any matters incidental and ancillary thereto; and

Details regarding elections to Councils

(*d*) the qualifications for being and for being nominated or elected a member of any such Council; and

(*e*) the final decision of doubts or disputes as to the validity of any election; and

(*f*) the manner in which the rules are to be carried into effect:

Provided that rules as to any such matters as aforesaid may provide for delegating to the Local Government such power as may be specified in the rules of making subsidiary regulations affecting the same matters.

(5) Subject to any such rules, any person who is a ruler or subject of any State in India may be nominated as a member of a Governor's Legislative Council.

Powers of Local Legislatures

(10) (1) The local Legislature of any province has power, subject to the provisions of this Act, to make laws for the peace and good government of the territories for the time being constituting that province.

Legislative power of Councils

(2) The local Legislature of any province may, subject to the provisions of the sub-section next following, repeal or alter as to that province any law made either before or after the commencement of this Act by any authority in British India other than that local Legislature.

(3) The local Legislature of any province may not, without the previous sanction of the Governor-General, make or take into consideration any law—

Previous sanction of Governor-General required for legislation by Provincial Councils on certain subjects

(*a*) imposing or authorising the imposition of any new tax unless the tax is a tax scheduled as exempted from this provision by rules made under the Principal Act; or

(*b*) affecting the public debt of India, or the customs duties, or any other tax or duty for the time being in force and imposed by the authority of the Governor-General in Council for the general purposes of the Government of India, provided that the imposition or alteration of a tax scheduled as aforesaid shall not be deemed to affect any such tax or duty, or

(*c*) affecting the discipline or maintenance of any part of His Majesty's naval, military or air forces; or

(*d*) affecting the relations of the Government with foreign princes or States; or

(*e*) regulating any central subject; or

(*f*) regulating any provincial subject which has been declared by rules under the Principal Act to be, either in whole or in part, subject to legislation by the Indian Legislature, in respect of any matter to which such declaration applies; or

(*g*) affecting any power expressly reserved to the Governor-General in Council by any law for the time being in force; or

(*h*) altering or repealing the provisions of any law which, having been made before the commencement of this Act by any authority in British India other than that local Legislature, is declared by rules under the Principal Act to be a law which cannot be repealed or altered by the local Legislature without previous sanction; or

(*i*) altering or repealing any provision of an Act of the Indian Legislature made after the commencement of this Act, which by the provisions of that Act may not be repealed or altered by the local Legislature without previous sanction:

Provided that an Act or a provision of an Act made by a local Legislature, and subsequently assented to by the Governor-General in pursuance of this Act, shall not be deemed invalid by reason only of its requiring the previous sanction of the Governor-General under this Act.

(4) The local Legislature of any province has not power to make any law affecting any Act of Parliament.

Business and procedure in Governors' Legislative Councils

11. (1) Sub-sections (1) and (3) of section eighty of the Principal Act (which relate to the classes of business which may be transacted at meetings of local Legislative Council) shall cease to apply to a Governor's Legislative Council, but the business and the procedure in any such Council shall be regulated in accordance with the provisions of this section.

(2) The estimated annual expenditure and revenue of the province shall be laid in the form of a statement before the Council in each year, and the proposals of the Local Government for the appropriation of provincial revenues and other moneys in any year shall be submitted to the vote of the Council in the form of demands for grants. The Council may assent, or refuse its assent, to a demand, or may reduce the amount therein referred to either by a reduction of whole grant or by the omission or reduction of any of the items of expenditure of which the grant is composed.

Provision about Budget

Provided that—

(*a*) The Local Government shall have power, in relation to any such demand, to act as if it had been assented to, notwithstanding the withholding of such assent or the reduction of the amount therein referred to, if the demand relates to a reserved subject, and the Governor certifies that the expenditure pro-

Governor's special powers about finance

vided for by the demand is essential to the discharge of his responsibility for the subject; and

(*b*) the Governor shall have power in cases of emergency to authorise such expenditure as may be in his opinion necessary for the safety or tranquillity of the province, or for the carrying on of any department; and

(*c*) no proposal for the appropriation of any such revenues or other moneys for any purpose shall be made except on the recommendation of the Governor, communicated to the Council.

Some heads of expenditure excluded from jurisdiction of Council

(3) Nothing in the foregoing sub-section shall require proposals to be submitted to the Council relating to the following heads of expenditure:

(*i*) contributions payable to the Local Government to the Governor-General in Council; and

(*ii*) interest and sinking fund charges on loans; and

(*iii*) expenditure of which the amount is prescribed by or under any law; and

(*iv*) salaries and pensions of persons appointed by or with the approval of His Majesty or by the Secretary of State in Council; and

(*v*) salaries of judges of the High Court of the province and of the Advocate-General.

If any question arises whether any proposed appropriation of moneys does or does not relate to the above heads of expenditure, the decision of the Governor shall be final.

Governor's special powers about legislation

(4) Where any Bill has been introduced or is proposed to be introduced, or any amendment to a Bill is moved or proposed to be moved, the Governor may certify that the Bill or any clause of it or the amendment affects the safety or tranquillity of his province or any part of it or of another province, and may direct that no proceedings or no further pro-

ceedings shall be taken by the Council in relation to the Bill, clause or amendment, and effect shall be given to any such direction.

Return and reservation of Bills

12. (1) Where a Bill has been passed by a local Legislative Council, the Governor, Lieutenant-Governor, or Chief Commissioner may, instead of declaring that he assents to or withholds his assent from the Bill, return the Bill to the Council for re-consideration, either in whole or in part, together with any amendments which he may recommend, or, in cases prescribed by rules under the Principal Act may, and if the rules so require shall, reserve the Bill for the consideration of the Governor-General.

Bill may be reserved for considera-tion of (1) Gover-nor-General

(3) The Governor-General may, (except where the Bill has been reserved for his consideration), instead of assenting to or withholding his assent from any Act passed by a local Legislature, declare that he reserves the Act for the signification of His Majesty's pleasure thereon, and in such case the Act shall not have validity until His Majesty in Council has signified his assent and his assent has been notified by the Governor-General.

(2) His Majesty

Provision for case of failure to pass legislation in Governors' Legislative Councils

13. (1) Where a Governor's Legislative Council has refused leave to introduce, or has failed to pass in a form recommended by the Governor, any Bill relating to a reserved subject, the Governor may certify that the passage of the Bill is essential for the discharge of his responsibility for the subject, and thereupon the Bill shall, notwithstanding that the Council have not consented thereto, be deemed to have passed, and shall, on signature by the Governor, become an Act of the local Legislature in the form of the Bill as originally introduced or proposed to be introduced in the Council or (as the case may be) in

Governor's Act

the form recommended to the Council by the Governor.

(2) Every such Act shall be expressed to be made by the Governor, and the Governor shall forthwith send an authentic copy thereof to the Governor-General, who shall reserve the Act for the signification of His Majesty's pleasure, and upon the signification of such assent by His Majesty in Council, and the notification thereof by the Governor-General, the Act shall have the same force and effect as an Act passed by the local Legislature and duly assented to:

Assent of His Majesty in Council required for Governor's Act

Provided that, where in the opinion of the Governor-General a state of emergency exists which justifies such action, he may, instead of reserving such Act, signify his assent thereto, and thereupon the Act shall have such force and effect as aforesaid, subject however to disallowance by His Majesty in Council.

Governor's Act may be assented to by Governor-General in case of emergency

(3) An Act made under this section shall, as soon as practicable after being made, be laid before each House of Parliament, and an Act which is required to be presented for His Majesty's assent shall not be so presented until copies thereof have been laid before each House of Parliament for not less than eight days on which that House has sat

Constitution of new provinces, &c., and provision as to backward tracts

15. (1) The Governor-General in Council may, after obtaining an expression of opinion from the Local Government and the local Legislature affected, by notification, with the sanction of His Majesty previously signified by the Secretary of State in Council, constitute a new Governor's province, or place part of a Governor's province under the administration of a Deputy-Governor to be appointed by the Governor-General, and may in any such case

Creation of new Governor's province

apply, with such modifications as appear necessary or desirable, all or any of the provisions of the Principal Act or this Act relating to Governors' provinces, or provinces under a Lieutenant-Governor or Chief Commissioner, to any such new province or part of a province.

Declaration of 'backward tract'

(2) The Governor-General in Council may declare any territory in British India to be a 'backward tract', and may, by notification, with such sanction as aforesaid, direct that the Principal Act and this Act shall apply to that territory subject to such exceptions and modifications as may be prescribed in the notification. Where the Governor-General in Council has, by notification, directed as aforesaid, he may, by the same or subsequent notification, direct that any Act of the Indian Legislature shall not apply to the territory in question or any part thereof, or shall apply to the territory or any part thereof subject to such exceptions or modifications as the Governor-General thinks fit, or may authorise the Governor in Council to give similar directions as respects any Act of the local Legislature.

Administration of 'backward tracts'

* * * *

PART II

GOVERNMENT OF INDIA

Indian Legislature

Composition of Indian Legislature

17. Subject to the provisions of this Act, the Indian Legislature shall consist of the Governor-General and two chambers, namely, the Council of State and the Legislative Assembly.

Except as otherwise provided by or under this Act, a Bill shall not be deemed to have been passed by the Indian Legislature unless it has been agreed to by both chambers, either without amendment or with such amendments only as may be agreed to by both chambers.

Council of State

Composition of Council of State

18 (1) The Council of State shall consist of not more than sixty members nominated or elected in accordance with rules made under the Principal Act, of whom not more than twenty shall be official members.

President of Council of State

(2) The Governor-General shall have power to appoint from among the members of the Council of State, a President and other persons to preside in such circumstances as he may direct.

(3) The Governor-General shall have the right of addressing the Council of State, and may for that purpose require the attendance of its members.

Legislative Assembly

Composition of Legislative Assembly

19 (1) The Legislative Assembly shall consist of members nominated or elected in accordance with rules made under the Principal Act.

Proportion of official and elected members

(2) The total number of members of the Legislative Assembly shall be one hundred and forty. The number of non-elected members shall be forty, of whom twenty-six shall be official members. The number of elected members shall be one hundred:

Provided that rules made under the Principal Act may provide for increasing the number of members of the Legislative Assembly as fixed by this section, and may vary the proportion which the classes of members bear one to another, so, however, that at least five-sevenths of the members of the Legislative Assembly shall be elected members, and at least one-third of the other members shall be non-official members.

(3) The Governor-General shall have the right of addressing the Legislative Assembly, and may for that purpose require the attendance of its members.

Indian Budget

25. (1) The estimated annual expenditure and revenue of the Governor-General in Council shall be

laid in the form of a statement before both chambers of the Indian Legislature in each year.

(2) No proposal for the appropriation of any revenue or moneys for any purpose shall be made except on the recommendation of the Governor-General.

Heads of expenditure which are not subject to vote of Legislative Assembly

(3) The proposals of the Governor-General in Council for the appropriation of revenue or moneys relating to the following heads of expenditure shall not be submitted to the vote of the Legislative Assembly, nor shall they be open to discussion by either chamber at the time when the annual statement is under consideration, unless the Governor-General otherwise directs—

(*i*) interest and sinking fund charges on loans; and

(*ii*) expenditure of which the amount is prescribed by or under any law; and

(*iii*) salaries and pensions of persons appointed by or with the approval of His Majesty or by the Secretary of State in Council; and

(*iv*) salaries of Chief Commissioners and Judicial Commissioners; and

(*v*) expenditure classified by the order of the Governor-General in Council as—

(*a*) ecclesiastical;
(*b*) political;
(*c*) defence.

(4) If any question arises whether any proposed appropriation of revenue or moneys does or does not relate to the above heads, the decision of the Governor-General on the question shall be final.

'Demands for grants'

(5) The proposals of the Governor-General in Council for the appropriation of revenue or moneys relating to the heads of expenditure not specified in the above heads shall be submitted to the vote of the Legislative Assembly in the form of demands for grants.

Financial powers of Legislative Assembly

(6) The Legislative Assembly may assent or refuse its assent to any demand or may reduce the amount referred to in any demand by a reduction of the whole grant.

Special powers of Governor-General about finance

(7) The demands as voted by the Legislative Assembly shall be submitted to the Governor-General in Council, who shall, if he declares that he is satisfied that any demand which has been refused by the Legislative Assembly is essential to the discharge of his responsibilities, act as if it had been assented to, notwithstanding the withholding of such assent, or the reduction of the amount therein referred to, by the Legislative Assembly.

(8) Notwithstanding anything in this section, the Governor-General shall have power, in cases of emergency, to authorise such expenditure as may, in his opinion, be necessary for the safety or tranquillity of British India or any part thereof.

Provision for case of failure to pass legislation

26. (1) Where either chamber of the Indian Legislature refuses leave to introduce, or fails to pass in a form recommended by the Governor-General, any Bill, the Governor-General may certify that the passage of the Bill is essential for the safety, tranquillity or interests of British India or any part thereof, and thereupon—

Governor-General's special legislative powers

(*a*) If the Bill has already been passed by the other chamber, the Bill shall, on signature by the Governor-General, notwithstanding that it has not been consented to by both chambers, forthwith become an Act of the Indian Legislature in the form of the Bill as originally introduced or proposed to be introduced in the Indian Legislature, or (as the case may be) in the form recommended by the Governor-General; and

(*b*) If the Bill has not already been so passed, the Bill shall be laid before the other chamber, and, if consented to by that chamber in the form recommended by the Governor-General, shall become an

(*c*) repealing or amending any Act or ordinance made by the Governor-General.

(2) Where in either chamber of the Indian Legislature any Bill has been introduced, or is proposed to be introduced, or any amendment to a Bill is moved, or proposed to be moved, the Governor-General may certify that the Bill, or any clause of it, or the amendment, affects the safety or tranquillity of British India, or any part thereof, and may direct that no proceedings, or that no further proceedings, shall be taken by the chamber in relation to the Bill, clause, or amendment and effect shall be given to such direction.

Composition of Governor-General's Executive Council

No limit to number of members of Executive Council

28. (1) The provision in section thirty-six of the Principal Act, imposing a limit on the number of members of the Governor-General's Executive Council, shall cease to have effect.

(2) The provision in section thirty-six of the Principal Act as to the qualification of members of the Council shall have effect as though the words 'at the time of their appointment' were omitted, and as though after the word 'Scotland' there were inserted the words 'or a pleader of the High Court' and as though 'ten years' were substituted for 'five years.'

* * * *

PART III

SECRETARY OF STATE IN COUNCIL

Relaxation of Control of Secretary of State

Rules may be made by Secretary of State, with approval of Parliament, for restricting his powers of superintendence, direction and control.

33. The Secretary of State in Council may, notwithstanding anything in the Principal Act, by rule regulate and restrict the exercise of the powers of superintendence, direction, and control, vested in the Secretary of State and the Secretary of State in Council, by the Principal Act, or otherwise, in such manner as may appear necessary or expedient in order to give effect to the purposes of this Act.

Before any rules are made under this section relating to subjects other than transferred subjects, the rules proposed to be made shall be laid in draft before both Houses of Parliament, and such rules shall not be made unless both Houses by resolution approve the draft either without modification or addition, or with modifications or additions to which both Houses agree, but upon such approval being given the Secretary of State in Council may make such rules in the form in which they have been approved, and such rules on being so made shall be of full force and effect.

Any rules relating to transferred subjects made under this section shall be laid before both Houses of Parliament as soon as may be after they are made, and, if an address is presented to His Majesty by either House of Parliament within the next thirty days on which that House has sat after the rules are laid before it praying that the rules or any of them may be annulled, His Majesty in Council may annul the rules or any of them, and those rules shall thenceforth be void, but without prejudice to the validity of anything previously done thereunder.

PART IV

THE CIVIL SERVICES IN INDIA

The Civil Services in India

36 (1) Subject to the provisions of the Principal Act and of rules made thereunder, every person in the civil service of the Crown in India holds office during His Majesty's pleasure, and may be employed in any manner required by a proper authority within the scope of his duty, but no person in that service may be dismissed by any authority subordinate to that by which he was appointed, and the Secretary of State of Council may (except so far as he may provide by rules to the contrary) reinstate any person in that service who has been dismissed.

Tenure of civil servants

Right of appeal to Governor

If any such person appointed by the Secretary of State in Council thinks himself wronged by an order of an official superior in a Governor's province, and on due application made to that superior does not receive the redress to which he may consider himself entitled, he may, without prejudice to any other right of redress, complain to the Governor of the province in order to obtain justice, and the Governor is hereby directed to examine such complaint and require such action to be taken thereon as may appear to him to be just and equitable.

Secretary of State's control over Civil Services

(2) The Secretary of State in Council may make rules for regulating the classification of the civil services in India, the methods of their recruitment, their conditions of service, pay and allowances, and discipline and conduct. Such rules may, to such extent and in respect of such matters as may be prescribed, delegate the power of making rules to the Governor-General in Council or to Local Governments, or authorize the Indian Legislature or local Legislatures to make laws regulating the public services:

'Existing or accruing' rights of civil servants guaranteed

Provided that every person appointed before the commencement of this Act by the Secretary of State in Council to the civil service of the Crown in India shall retain all his existing or accruing rights, or shall receive such compensation for the loss of any of them as the Secretary of State in Council may consider just and equitable.

Pension of civil servants

(3) The right to pensions and the scales and conditions of pensions of all persons in the civil service of the Crown in India appointed by the Secretary of State in Council shall be regulated in accordance with the rules in force at the time of the passing of this Act. Any such rules may be varied or added to by the Secretary of State in Council and shall have effect as so varied or added to, but any variation or addition shall not adversely affect the pension of any member of the service appointed before the date thereof.

Nothing in this section or in any rule thereunder shall prejudice the rights to which any person may, or may have, become entitled under the provisions in relation to pensions contained in the East India Annuity Funds Act, 1874.

(4) For the removal of doubts, it is hereby declared that all rules or other provisions in operation at the time of the passing of this Act, whether made by the Secretary of State in Council or by any other authority, relating to the civil service of the Crown in India, were duly made in accordance with the powers in that behalf, and are confirmed, but any such rules or provisions may be revoked, varied or added to by rules or laws made under this section.

Part V

STATUTORY COMMISSION

Appointment of Commission

41. (1) At the expiration of ten years after the passing of this Act the Secretary of State, with the concurrence of both Houses of Parliament, shall submit for the approval of His Majesty the names of persons to act as a commission for the purposes of this section.

Work to be done by the Commission

(2) The persons whose names are so submitted, if approved by His Majesty, shall be a commission for the purpose of inquiring into the working of the system of government, the growth of education, and the development of representative institutions in British India, and matters connected therewith, and the commission shall report as to whether and to what extent it is desirable to establish the principle of responsible government, or to extend, modify, or restrict the degree of responsible government then existing therein, including the question whether the establishment of second chambers of the local Legislatures is or is not desirable.

(3) The commission shall also inquire into and report on any other matter affecting British India and the provinces, which may be referred to the commission by His Majesty.

II. Devolution Rules

[The following extracts from the Report of the Simon Commission are relevant in connection with the Devolution Rules framed under the Act of 1919:

"141. What the Reforms effected in delimiting a provincial field (as in much else) cannot be discovered by reading the Act of 1919 alone. Devolution to the provinces was carried out by rules made under the Act and approved by both Houses of Parliament. These rules are known as the Devolution Rules.. . . .it is far more important. . . . .to appreciate the effect of these statutory rules than to search for a picture of the present constitution in the Act itself. . . . .the provincial devolution thus effected, whether in the legislative, the administrative, or the financial sphere, takes place only with reference to the nine major provinces, called in the Act the "Governors' Provinces". The rest of British India, so far as the devolution of authority from the centre is concerned, remains essentially in the same position as before the passing of the Act of 1919 . . . Here we are concerned only with the nine provinces of Madras, Bombay, Bengal, and United Provinces, the Punjab, Bihar and Orissa, the Central Provinces, Assam and Burma. In the case of each of these, the demarcation between the central and the provincial field is identical; in the subdivision of provincial subjects between "reserved" and "transferred". . . ., there are a few variations between province and province.

Devolution Rules

Provincial devolution applies only to 9 major Provinces

142. In respect of these nine provinces, the method followed is to classify subjects, for the purpose of distinguishing the functions of provincial Governments and Legislatures from the functions of the Central Government and Legislature, by dividing them into "Central Subjects" and "Provincial Subjects". We reproduce. . . .the Schedule to Rule 3 of the Devolution Rules, which contains this distribution. In all such distributions the question arises as to the side of the line on which subjects which happen to be omitted are to fall; in the case of India, the answer is given by the last item in the list of central subjects. Any matter not included among provincial subjects is central; the undistributed residue thus follows the Canadian, and not the Australian, model. If any doubt arises as to whether a particular matter does or does not relate to a provincial subject, the Governor-General in Council finally decides the question; there is no room for appeal to the law courts in such a case. The principle of discrimination between central and provincial subjects is that, where extra-provincial interests predominate, the subject is treated as central, while on the other hand all subjects in which the interests of a particular province essentially predominate are provincial. . . . .

"Central subjects" and "Provincial subjects"

Residuary subjects

No appeal to courts

Principle of classification

143. The subjects earmarked as provincial may be regarded as so classified both for purposes of administration and for purposes of legislation But, although topics are thus distributed, the Central Legislature remains theoretically entitled to legislate over the whole field and no challenge can arise as to whether a given piece of legislation has been carried out by the right legislature. For, by Section 84(2) of the Government of India Act "the validity of any Act of the Indian legislature or any local legislature shall not be open to question in any legal proceedings on the ground that the Act affects a provincial subject, or a central subject, as the case may be." There are a number of subjects about which a provincial Council may not legislate without the previous sanction of the Governor-General [Section 80A(3)], but here again the way is blocked to prevent any Court or Judge deciding that the provincial law is invalid because the previous sanction of the Governor-General has not been obtained—for his subsequent assent (which is in any case necessary to make a provincial Act valid) cures the defect Conversely, the previous sanction of the Governor-General is required before the Central Legislature can trench upon the field which is *prima facie* provincial [Section 67(2) (i) and (ii)] Thus the Indian constitution has adopted an ingenious method of securing in practice a distribution of topics between the Central Legislature and provincial legislatures while avoiding the danger of technical objections being raised and litigation promoted on the plea that the wrong legislature has passed the Act and that, therefore, it is a nullity.

Power of Central Legislature to legislate on Provincial subjects

Power of Governor-General

144. Besides marking out for the provinces a legislative and administrative sphere, the reformed constitution effected a delimitation of sources of revenue for purposes of provincial finance. It was a prime object to do so. "Our first aim", ran the Report, "has been to find some means of entirely separating the resources of the central and provincial Governments".[1] Again, this purpose is carried out by Rules, which allocate certain classes of revenue, such as land revenue and excise on alcoholic liquor, to provincial Governments, while customs and income tax, for example, remain sources of central revenue. . . . .

Allocation of financial sources

Part I—Central Subjects

1. (*a*) Defence of India, and all matters connected with His Majesty's Naval, Military, and Air Forces in India, or with His Majesty's Indian Marine

[1] *Montagu-Chelmsford Report,* para 200.

Service or with any other force raised in India, other than military and armed police wholly maintained by Local Governments.

(*b*) Naval and military works and cantonments.

2. External relations, including naturalisation and aliens, and pilgrimages beyond India.

3. Relations with States in India.[1]

4. Political charges.

5. Communications to the extent described under the following heads, namely:—

(*a*) Railways and extra-municipal tramways, in so far as they are not classified as provincial subjects under entry 6(*d*) of Part II of this Schedule:

(*b*) aircraft and all matters connected therewith; and

(*c*) inland waterways, to an extent to be declared by rule made by the Governor-General in Council or by or under legislation by the Indian Legislature.

6. Shipping and navigation, including shipping and navigation on inland waterways in so far as declared to be a central subject in accordance with entry 5(*c*).

7. Lighthouses (including their approaches), beacons, lightships, and buoys.

8. Port quarantine and marine hospitals.

9. Ports declared to be major ports by rule made by the Governor-General in Council or by or under legislation by the Indian Legislature.

10. Posts, telegraphs and telephones, including wireless installations.[2]

[1] The following words were added in 1932: "and all matters relating to tribal or other territory outside British India, but included in India"

[2] The following words were added in 1935: "and broadcasting".

11. Customs, cotton excise duties, income tax, salt, and other sources of all-India revenues.

12. Currency and coinage.

13. Public debt of India.

14. Savings Banks.

15. The Indian Audit Department *and excluded Audit Departments*[1] as defined in the rules framed under section 96D(1) of the Act.

16. Civil law, including laws regarding status, property, civil rights and liabilities, and civil procedure.

17. Commerce, including Banking and Insurance.

18. Trading companies and other associations.

19. Control of production, supply and distribution of any articles in respect of which control by a central authority is declared by rule made by the Governor-General in Council or by or under legislation by the Indian Legislature to be essential in the public interest.[2]

20. Development of industries, in cases where such development by central authority is declared by order of the Governor-General in Council, made after consultation with the local Government or local Governments concerned, expedient in the public interest.

21. Control of cultivation and manufacture of opium, and sale of opium for export.

22. Stores and stationery, both imported and indigenous, required for Imperial Departments.

23. Control of petroleum and explosives.

24. Geological survey.

25. Control of mineral development, in so far as such control is reserved to the Governor-General

[1] The italicised words were omitted in 1926.

[2] The following words were added in 1926: "save to the extent to which in such rule or legislation such control is directed to be exercised by a local Government".

in Council under rules made or sanctioned by the Secretary of State, and regulation of mines.

26. Botanical Survey.

27. Inventions and designs.

28. Copyright.

29. Emigration from, and immigration into, British India, and inter-provincial migration.

30. Criminal Law, including criminal procedure.

31. Central police organisation.

32. Control of arms and ammunition.

33. Central agencies and institutions for research (including observatories), and for professional or technical training or promotion of special studies.

34. Ecclesiastical administration, including European cemeteries.

35. Survey of India.

36. Archaeology.

37. Zoological survey.

38. Meteorology.

39. Census and statistics.

40. All-India services.

41. Legislation in regard to any provincial subject, in so far as such subject is in Part II of this Schedule stated to be subject to legislation by the Indian Legislature, and any powers relating to such subject reserved by legislation to the Governor-General in Council.

42. Territorial changes, other than intra-provincial, and declaration of laws in connection therewith.

43. Regulation of ceremonial, titles, orders, precedence, and civil uniform.

44. Immovable property *acquired by, and maintained at the cost of,*[1] the Governor-General in Council.

[1] For the italicised words the following words were substituted in 1926: "in the possession of".

45. The Public Service Commission.

46. All matters expressly excepted by the provisions of Part II of this Schedule, from inclusion among Provincial subjects.

47. All other matters not included among Provincial subjects under Part II of this Schedule.

Part II—PROVINCIAL SUBJECTS[1]

*1. Local self-government, that is to say, matters relating to the constitution and powers of municipal corporations, improvement trusts, district boards, mining boards of health, and other local authorities established in a Province for the purpose of local self-government, exclusive of matters arising under the Cantonments Act, 1910; subject to legislation by the Indian Legislature as regards:—

(*a*) the powers of such authorities to borrow otherwise than from a Provincial Government, and

(*b*) the levying by such authorities of taxation not included in Schedule II to the Scheduled Taxes Rules.

*2. Medical administration, including hospitals, dispensaries and asylums, and provision for medical education.[2]

*3. Public health and sanitation and vital statistics; subject to legislation by the Indian Legislature in respect to infectious and contagious diseases to such extent as may be declared by any Act of the Indian Legislature.

*4. Pilgrimages within British India.

[1] Some of these provincial subjects are "transferred", the rest are "reserved". The transferred Provincial subjects are set out in Schedule II to Rule 6 of the Devolution Rules. This Schedule is not given separately here, but the transferred subjects are those marked with an asterisk. Except where otherwise indicated in the footnotes, subjects so marked are transferred in all Governors' provinces.

[2] The following words were added in 1932: "but excluding medical establishments entertained in the North-West Province in connection with the Frontier watch and ward".

*5. Education[1]; provided that—

(a) the following subjects shall be excluded, namely:—

(i) the Benares Hindu University, *the Aligarh Muslim University*[2] and such other Universities constituted after the commencement of these rules as may be declared by the Governor-General in Council to be central subjects; and

(ii) Chiefs' colleges and any institutions maintained by the Governor-General in Council for the benefit of members of His Majesty's Forces or of other public servants or of the children of such members or servants; and

(b) the following subjects shall be subject to legislation by the Indian Legislature, namely:—

the definition of the jurisdiction of any University outside the province in which it is situated.[3]

*6. Public works[4], *other than those falling under entry 14 of this Part and*[5] included under the following heads, namely:—

(a) Construction and maintenance of provincial buildings used or intended for any purpose in connection with the administration of the Province; and

[1] European and Anglo-Indian Education was transferred only in Burma.

[2] The italicised words were inserted in 1921.

[3] Originally there were two other subjects under this item, which were omitted in 1926:

> "the control of the establishment and the regulation of the constitutions and functions of Universities constituted after the commencement of these rules";
>
> "for a period of five years from the commencement of these rules, the Calcutta University, and the control and organisation of secondary education in the Presidency of Bengal".

[4] Transferred in all Governors' provinces except Assam, with the exception that the construction and maintenance of residences of Governors are everywhere reserved.

[5] The italicised words were added in 1922.

care of historical monuments, with the exception of ancient monuments as defined in Section 2(1) of the Ancient Monuments Preservation Act, 1904, which are for the time being declared to be protected monuments under Section 3(1) of that Act; provided that the Governor-General in Council may, by notification in the *Gazette of India*, remove any such monument from the operation of this exception, *either absolutely or subject to such conditions as he may, after consultation with the Local Government or Local Governments concerned, prescribe;*[1]

(*b*) Roads, bridges, ferries, tunnels, ropeways, causeways, and other means of communication, subject to the provision of rule 12A of these Rules, and of any orders made thereunder;[2]

(*c*) tramways within municipal areas; and

(*d*) light and feeder railways and extra-municipal tramways, in so far as provision for their construction and management is made by provincial legislation; subject to legislation by the Indian Legislature in the case of any such railway or tramway which is in physical connection with the main line or is built on the same gauge as an adjacent main line.

7. Water supplies, irrigation and canals, drainage and embankments, water storage and water power; subject to legislation by the Indian Legislature with regard to matters of inter-provincial concern or affecting the relations of a province with any other territory.

8. Land revenue administration as described under the following heads, namely:—

(*a*) assessment and collection of land revenue;

(*b*) maintenance of land records, survey for revenue purposes, records-of-rights;

(*c*) laws regarding land tenures, relations of landlords and tenants, collection of rents;

(*d*) Courts of Wards, encumbered and attached estates;

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[1] The italicised words were added in 1925.

[2] This item was included in 1925.

(*e*) land improvement and agricultural loans;

(*f*) colonization and disposal (*subject to any provisions or restrictions that may be prescribed by the Secretary of State in Council under Section 30 of the Act*)[1] of Crown lands and alienation of land revenue; and

(*g*) management of Government estates.

9. Famine relief.

*10. Agriculture, including research institutes, experimental and demonstration farms, introduction of improved methods, provision for agricultural education, protection against destructive insects and pests, and prevention of plant diseases; subject to legislation by the Indian Legislature in respect to destructive insects and pests and plant diseases to such extent as may be declared by any Act of the Indian Legislature.

*11. Civil Veterinary Department, including provision for veterinary training, improvement of stock, and prevention of animal diseases; subject to legislation by the Indian Legislature in respect to animal diseases to such extent as may be declared by any Act of the Indian Legislature.

*12. Fisheries.

*13 Co-operative Societies.

*14. Forests,[2] including preservation of game therein *and all buildings and works executed by the Forest Department*;[3] subject to legislation by the Indian Legislature as regards disforestation of reserved forests.

15. Land acquisition; subject to legislation by the Indian Legislature.

*16. Excise, that is to say, the control of production, manufacture, possession, transport, purchase and sale of alcoholic liquor and intoxicating drugs, and the levying of excise duties and licence fees on or in relation to such articles, but excluding, in the case of opium, control of cultivation, manufacture and sale for export.

[1] The italicised words were added in 1926.

[2] Transferred in Bombay and Burma only.

[3] The italicised words were added in 1922.

17. Administration of justice, including constitution, powers, maintenance, and organisation of courts of civil and criminal jurisdiction within the Province; subject to legislation by the Indian Legislature as regards High Courts, Chief Courts, and Courts of Judicial Commissioners, and any courts of criminal jurisdiction.

18. Provincial law reports.

19. Administrators-General and Official Trustees; subject to legislation by the Indian Legislature

20. Non-judicial stamps, subject to legislation by the Indian Legislature, and judicial stamps. subject to legislation by the Indian Legislature, as regards amount of court fees levied in relation to suits and proceedings in the High Courts under their original jurisdiction.

*21. Registration of deeds and documents; subject to legislation by the Indian Legislature.

*22. Registration of births, deaths and marriages; subject to legislation by the Indian Legislature for such classes as the Indian Legislature may determine.

*23. Religious and charitable endowments.

24. Development of mineral resources which are Government property, subject to rules made or sanctioned by the Secretary of State, but not including the regulation of mines.

24A. Control of production, supply and distribution of any articles to the extent to which by rule made by the Governor-General in Council or by or under legislation by the Indian Legislature such control is directed to be exercised by a Local Government.[1]

*25. Development of industries, including industrial research and technical education.

26. Industrial matters included under the following heads, namely:—

(*a*) factories;

(*b*) settlement of labour disputes;

(*c*) electricity;

(*d*) boilers;

[1] Added in 1926.

(*e*) gas;

(*f*) smoke nuisances; and

(*g*) welfare of labour, including provident funds, industrial insurance (general, health and accident), and housing; Subject as to heads (*a*), (*b*), (*c*), (*d*) and (*g*) to legislation by the Indian Legislature.

*27. Stores and stationery[1], subject, in the case of imported stores and stationery, to such rules as may be prescribed by the Secretary of State in Council.

*28. Adulteration of foodstuffs and other articles; subject to legislation by the Indian Legislature as regards import and export trade.

*29. Weights and measures; subject to legislation by the Indian Legislature as regards standards.

30. Ports, except such ports as may be declared by rules made by the Governor-General in Council or by or under Indian legislation to be major ports.

31. Inland waterways, including shipping and navigation thereon so far not declared by the Governor-General in Council to be Central subjects, but subject as regards inland steam vessels to legislation by the Indian Legislature.

32. Police, including railway police; subject in case of railway police, to such conditions as regards limits of jurisdiction and railway contributions to cost of maintenance as the Governor-General in Council may determine.

33. The following miscellaneous matters, namely:—

*(*a*) regulation of betting and gambling[2];

*(*b*) prevention of cruelty to animals[2];

*(*c*) protection of wild birds and animals[2];

(*d*) control of poisons, subject to legislation by the Indian Legislature;

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[1] Only Stores and Stationery required for transferred departments are transferred.

[2] Transferred in Burma only.

(*e*) control of vehicles, subject, in the case of motor vehicles, to legislation by the Indian Legislature as regards licenses valid throughout British India[1]; and

*(*f*) control of dramatic performances and cinematographs[2], subject to legislation by the Indian Legislature in regard to sanction of films for exhibition.'

34. Control of newspapers, books and printing presses; subject to legislation by the Indian Legislature.

35. Coroners.

36. Excluded areas.

37. Criminal tribes; subject to legislation by the Indian Legislature.

38. European vagrancy; subject to legislation by the Indian Legislature.

39. Prisons, prisoners (except persons detained under the Bengal State Prisoners Regulation, 1818, the Madras State Prisoners Regulation, 1819, or the Bombay Regulation, XXV of 1827) and reformatories; subject to legislation by the Indian Legislature.[3]

*40. Pounds and prevention of cattle trespass.

41. Treasure trove.

*42. Libraries (except the Imperial Library) and museums (except the Indian Museum, the Imperial War Museum, the Victoria Memorial, Calcutta) and Zoological Gardens.

43. Provincial Government Presses.

44. Elections for Indian and Provincial Legislatures; subject to rules framed under Sections 64(1) and 72A(4) of the Act.

45. Regulation of medical and other professional qualifications and standards; subject to legislation by the Indian Legislature.

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[1] Substituted for the original clause (*e*) in 1924.
[2] Transferred in Burma only.
[3] Substituted in 1925.

46. Local Fund Audit, that is to say, the audit by Government agency of income and expenditure controlled by local bodies.

47. Control, as defined by Rule 10,[1] of members of all-India and provincial services serving within the province; and control, subject to legislation by the Indian Legislature, of public services within the province other than all-India services.

48. Sources of provincial revenue, not included under previous heads, whether

(a) taxes included in the Schedules to the Scheduled Taxes Rules[2]; or

(b) taxes not included in those Schedules, which are imposed by or under provincial legislation which has received the previous sanction of the Governor-General.

49. Borrowing of money on the sole credit of the province, subject to the provisions of the Local Government (Borrowing) Rules.

50. Imposition by legislation of punishment by fines, penalty, or imprisonment for enforcing any law of the province relating to any provincial subject, subject to legislation by the Indian Legislature in the case of any subject in respect of which such a limitation is imposed under these rules.

[1] "The authority vested in the Local Government over officers of the Public Services employed in a Governor's Province shall be exercised in the case of officers serving in a department dealing with Reserved Subjects by the Governor in Council, and in the case of officers serving in a department dealing with transferred subjects by the Governor acting with the Minister in charge of the department provided that—

(a) no order affecting emoluments or pensions, no order of formal censure, and no order on a memorial shall be passed to the disadvantage of an officer of an all-India or provincial Service without the personal concurrence of the Governor; and

(b) no order for the posting of an officer of an all-India Service shall be made without the personal concurrence of the Governor".

[2] See Gwyer and Appodorai, *Speeches and Documents on the Indian Constitution*, Vol. I, pp. 165-166.

51. Any matter which, though falling within a central subject, is declared by the Governor-General in Council to be of a merely local or private nature within the province.

III. Montagu[1] on Government of India Bill, 1919.

. . . I would . . . .remind the House that deliberately, of intention, in accordance with the terms of the pronouncement of the 20th August, this Bill does not pretend to give to India a Constitution that will endure. It is transitional; it is a bridge between government by Parliament and government by the representatives of the peoples of India. . . . .

'Transitional' constitution

* * * *

. . . . . .There are the proposals for devolution, the proposals for decentralization. I have heard no critic in these two years who has not told me that it is absolutely essential to get greater freedom for the Government of India from the India Office. I have hardly met a critic who has not told me that it is absolutely essential for the Local Governments to get more freedom from the Government of India. . . . .I do not think that anybody questions that, from the point of view of administrative convenience, if on no higher grounds, government by dispatch, with all its cumbrous machinery, all its necessarily delaying methods, all the difficulties attending upon considering and reconsidering plans and projects over thousands of miles of land and thousands of miles of sea, all that ought to be got rid of. . . . .The only possible substitute for government by dispatch is government by vote. The only possible way of really achieving devolution and making the unit. . . . .responsible for the management of its own affairs, is to make the Government of that unit responsible to the representatives of the people. If you simply say, 'Let us have an irresponsible Government in a province, and let the Government of India not interfere, and the

Necessity of 'decentralisation'

Connection between 'decentralisation' and popular control

[1] House of Commons, June 5, 1919.

Secretary of State not interfere,' you have a policy which is merely the enthronement of bureaucracy and the very negation of the progressive realization of responsible government.

Why Province chosen as unit in scheme of 'decentralisation'

.....In order to realize responsible government, and in order to get devolution. . . .you have to choose your unit of government, and you have got in that unit to create an electorate which will control the Government. . . .It is in the province that you must look for your unit, because it is in the provinces that the great educational results of Lord Morley's Reform Bill have been achieved. He made the Legislative Councils representative to some extent of the people, with a very small electorate and practically no powers beyond powers of criticism. But it is the existence of those Councils which has awakened the appetite for self-government, and has added to the appreciation of self-government in India, and it is therefore, to my mind, absolutely inevitable that we should proceed to devote ourselves to taking the Morley-Minto Councils a stage farther in their development. Therefore it is to the provinces that we go, and the provinces are beginning to be the units of local patriotism in India.

Development of Morley-Minto Councils to be continued

Difficulties in the way of 'progressive realisation of responsible government'

If I have carried the House with me in the suggestion that the province is the unit in which we shall start a progressive realization of responsible government, what are the difficulties that we have to face? .....The difficulties are these. . . .You have a small fraction of the population highly educated and a large proportion of the population not educated at all. You have, secondly, great differences of race and religion and great difficulties arising out of the harsh customs and precepts of caste. I cannot help believing that there is no better way of getting over those difficulties than by representative institutions. There is no greater stimulus to education, there is no better way of promoting community of action or of overcoming the acerbities of caste than by setting to the population a common task to do together, to work out the prosperity of their country. . . .

Difficulties may be removed by representative institutions.

Despite all these difficulties, I therefore say the essence of the problem is to train the electors. . . . . proposals have been made to put 5,000,000 voters on the register. But you do not form an electorate by that mere process. You have to get them to vote and you have to get them to understand what a vote means. You have to get them to appreciate the results of a vote. There is only one way of doing that, and that is to make the vote of some value. . . Therefore it is a necessary step for the training of an electorate that you must give it power through its representatives. . . . .You have to give the electorate which you create men responsible to it to carry out its demands

Electors cannot be trained without giving them power.

If I have carried the House thus far, the next step must be that you have to choose a part of the provincial functions which at the outset you will entrust to the representatives of the people Anyone who has followed me in what I have said about education, about caste, and about religious differences, will realize that it is not right to entrust them with everything at the same moment. There are some things, such as the maintenance of peace and order. . . . . things in which mistakes are irretrievable, things in which the electorate at the outset should not be able to enforce its demands, things like Land Revenue, which you should keep from the control of the representatives of the people. . . .

Certain functions of Provincial Government cannot be put under popular control

. . . . .the only way to achieve our purpose was to reserve for the present and for the present only, certain functions of government under the control of the agents of this House, and to transfer other functions to the representatives of the people. . . .the next question to be decided is, what is the form of ministry that you will set up to conduct them? Is it to be one or is it to be two? . . . if reserved subjects are to become transferred subjects one day, it is absolutely essential that, during the transitional period, although there is no direct responsibility for them, there should be opportunities of influence and consultation. There-

Certain functions of Provincial Government may be transferred to popular control.

Composition of Provincial Executive

fore, although it seems necessary to separate the responsibility, there ought to be every room that you can possibly have for consultation and joint deliberation on the same policy, and for acting together for the purposes of consultation and deliberation, as the Bill provides, in one Government

* * * *

Review of progress at stated periods

.....This procedure would be absolutely indefensible if it were not for the fact that it was transitional, and if it were not for the fact that at stated periods it is proposed to hold a Parliamentary enquiry into its working, with a view to further stages. By that means there is a certain method of progress By that means everything that happens will come under review, and the attitude adopted by each part of the Government to the affairs of the other part will be one of the prime factors in the decision of the Commission that reviews.

Responsible Government at the Centre not possible

... I do not think the time has yet come for a similar movement in the Government of India. I think there we must take the step of one stage only, namely, to make the Legislative Assembly more representative, to give it greater power of influencing and criticizing, but not, at this moment, of responsibility ....In so far as the Provincial Government has got to defer to its legislature by statute, that is to say in transferred subjects, you have a Government which is responsible to the electorate. Therefore there is no necessity to control it by the Government of India and you get the devolution which the men who want to perfect administration desire.

In Provinces 'transferred subjects' should be freed from control of Government of India, Secretary of State and Parliament.

Therefore the Government of India will not be concerned, generally speaking, with transferred subjects, and the Secretary of State will not be concerned with transferred subjects. Therefore, this House will not be concerned with transferred subjects. Therefore, so far as transferred subjects are concerned, we shall have parted with our trusteeship and surrendered it to the representatives of the peoples of India......

* * * *

I implore this House to show to India to-day that Parliament is receptive of the case for self-government and only seeks on opportunity of completing it by the demonstrable realization of the success of its stages. . . . .'The future and the date upon which you realize the future goal of self-government are with you, you are being given great responsibility to-day, and the opportunities of consultation and influence on other matters in which for the present we keep responsibility. You will find in Parliament every desire to help and to complete the task which this Bill attempts, if you devote yourselves to use with wisdom, with self-restraint, with respect for minorities, the great opportunities with which Parliament is entrusting you'. That is the message which. . . . .this House should send to the Indian peoples to-day. . . . .That message cannot be sent unless the House is determined to pass . . a statute which means the beginning of self-government, responsible government, in the Indian Empire.

Message to India

'Beginning of self-government, responsible government, in India'

6. THE CREWE COMMITTEE[1] ON 'HOME' ADMINISTRATION OF INDIAN AFFAIRS, 1919.

Task of the Committee

1. The Committee was appointed to enquire into the organisation of the India Office and the relations between the Secretary of State in Council and the Government of India. We were directed to have regard generally to the proposals made in the Report on Indian Constitutional Reforms for the reform of Government of India and provincial Governments, and in particular to the recommendations contained in paragraphs 290 to 295 of the Report.

* * * *

[1] The Committee consisted of the Marquess of Crewe, Lord Inchcape, H H Aga Khan, Lord Esher, Mr. G. P Collins, Mr. G. E. Murray and Mr. Ormsby-Gore. Lord Inchcape was prevented by illness from joining the Committee.

Historical background of Indian constitution

8. There is much in the existing system which has its origin in arrangements suited to the control by the East India Company of its commercial operations in a distant land. These operations led to the exercise by the Company of governmental powers, in regard to which Parliament from an early date asserted its supremacy. The inter-action of the two forces had by 1858 produced a constitution which may shortly be described as follows:—The executive management of the Company's affairs was in the hands of a Court of Directors, who were placed in direct and permanent subordination to a body representing the British Government and known as the Board of Control. The functions of the Board were in practice exercised by the President, who occupied in the Government a position corresponding to some extent to that of a modern Secretary of State for India. The Board of Control were empowered "to superintend, direct and control all acts, operations, and concerns which in anywise relate to the civil or military government or revenues of the British territorial possessions in the East Indies" (24 Geo. III, sess. 2, c. 25). Subject to the superintendence of the Board of Control, the Directors conducted the correspondence with the Company's officers in India, and exercised the rights of patronage in regard to appointments.

System at work in 1858

Transfer of government to the Crown

9. The transference of the administration of India to the Crown in 1858 was effected by the Act for the better Government of India (21 & 22 Vict., c. 106), which has regulated the Home administration of India since that year, and of which the main provisions were re-enacted in the consolidated Government of India Act, 1915-16. In general, the dual functions of the Board of Control and the Court of Directors were vested in the corporate body known as the Secretary of State for India in Council. The substitution of administrative responsibility on the part of the Government for the superintendence it had formerly exercised caused a redistribution of functions in which the lines of inheritance became to

Continuation of 'dual principle'

some extent obscured; but the persistence of the dual principle can still be traced in the corporate activities of the Secretary of State in Council.

Functions of Secretary of State

10. "The Secretary of State has and performs all such or the other like powers and duties relating to the government or revenues of India, and has all such or the like powers over all officers appointed or continued under this Act, as, if the Government of India Act, 1858, had not been passed, might or should have been exercised or performed by the East India Company or by the Court of Directors.....either alone or by the direction or with the sanction or approbation of the Commissioners for the Affairs of India" (i.e., the Board of Control) "in relation to that government or those revenues and the officers and servants of that Company, and also all such powers as might have been exercised by the said Commissioners alone." [*Government of India Act, 1915-16*, section 2(1).]

Functions of Council of India

11. The functions assigned to the Council of India were in some respects derived from the position previously held by the Court of Directors. Under the direction of the Secretary of State, and subject to the provisions of the Act, they "conduct the business transacted in the United Kingdom in relation to the government of India and the correspondence with India." But at the same time they were given a special function, which was presumably intended to act as a counterpoise to the centralisation of powers in the hands of the Secretary of State In regard to certain decisions, and notably in regard to "the grant or appropriation of any part of" the revenues of India, the concurrence of a majority of votes at a meeting of the Council of India is required. This provision, usually referred to as the financial veto, has, not without reason, been regarded as the symbol of the special status assigned to the Council in its relationship with the Secretary of State. It is emphasised, though in a lesser degree, by the enactment that in all other matters, with two exceptions, the Secretary of State must consult

Council of India as a 'counterpoise to the centralisation of powers in the hands of the Secretary of State'

his Council either at a weekly meeting or by the formal procedure of depositing his proposed orders on the Table of the Council Room for seven days prior to their issue, though he is empowered to overrule the Council's recommendations. The two exceptions are, first, that in cases of urgency he may issue orders without previously consulting the Council, provided that he subsequently communicates to the members his reasons for his action, and secondly, that "where an order or communication concerns the levying of war, or the making of peace, or the public safety, or the defence of the realm, or the treating or negotiating with any prince or state, or the policy to be observed with respect to any prince or state, and a majority of votes therefore at meeting of the Council of India is not required," the Secretary of State may act on his own initiative without reference to the Council, if he considers that the matter is of a nature to require secrecy. Our description of the statutory functions of the Secretary of State and the Council of India is designedly brief, because we feel that the enumeration of legal powers and safeguards can only create a very inadequate impression of the actual principles which have been evolved in the working of the system There are some elements which, as we have tried to show, have been derived from the days of a chartered Company yielding more and more to Parliamentary control, and others which were grafted on to the structure at the time when Parliament assumed complete responsibility through its Ministerial representative; but the whole organism has been moulded by the instinctive process of adaptation to a form which does not lend itself easily to definition in set constitutional terms. We are content for our purposes to envisage the system in its present working and in its reaction to the new conditions of Indian administration.

Secretary of State empowered to overrule Council

Relations between Secretary of State and Council 'moulded by the instinctive process of adaptation'

12. The new Council consists of from ten to fourteen members, each appointed for seven years, of whom nine at least must have served or resided in British India for ten years and must not have left

Composition of Council of India

India more than five years previously to their appointment. It is in the main a body differing in status but not in nature from the authorities in India whose activities come under its review. The Secretary of State in Council represents in fact that supreme element of expert control at the higher end of the chain of official administration In corporate capacity he has delegated wide powers to the Indian administrations without divesting himself of his ultimate responsibilities as the governing authority. The main porvisions of the Act of 1858, as we understand them, had the effect of giving prominence to these official duties of the corporation it established. But the Secretary of State, as distinct from the Secretary of State in Council, is generally responsible as a Minister for the co-ordination of Indian and Imperial policy. The Council are by law in a position to obstruct his policy, or indeed the policy of His Majesty's Government, by interposing their financial veto if Indian revenues are affected; but in practice they have acknowledged the supremacy of the Imperial Executive by accepting proposals communicated to them as decisions of the Ministry, in so far as those proposals raise issues on which they are legally competent to decide. We mention this demarcation of functions, to which we shall revert, to illustrate the way in which the hard outlines of legal definition have been rounded off by constitutional usage. But we are immediately concerned at present with the collective functions of the Secretary of State in Council in their relation to the Government of India. And in that relation the governing body was designed to assert an active supremacy. All measures, administrative, financial and legislative, of the authorities in India are referred to it for examination and decision, except in so far as by general or special orders it has delegated powers of sanction. Delegation has been carried out largely as a matter of expediency, with the direct object of increasing administrative efficiency; it has not implied, and has not been intended to imply, any radical change in the respective functions of the authorities between

'Expert control'

Secretary of State as 'Minister for the co-ordination of Indian and imperial policy'

Council of India subject to 'the supremacy of the Imperial Executive'

'Legal definition' modified by 'constitutional usage'

'Active supremacy' of Secretary of State in Council over Government of India

whom it has taken place. The Secretary of State in Council retains the ultimate authority as the head of the system; and we have now to see how far the conception of graduated official control—tempered, it may be, at various stages by the advice of representatives of the people—can be adapted to the principle of popular responsibility which is to be introduced

How can this 'active supremacy' be adapted to popular responsibility?

Principal features of Mont-Ford Reforms

13. The features which typify the Reforms Scheme are the transfer of some subjects of administration from officers of the Crown to representatives of the people in the provinces, and the encouragement in the Indian legislature of an authoritative expression of popular opinion to which the Governments will become increasingly responsive Simultaneously with these developments a systematic delegation of powers, which, indeed, has long been felt to be desirable in the interests of efficiency, is contemplated in order that the free influence of the new forces may not be blocked at the outset by some survival of the system they are intended eventually to supplant. Leaving on one side for the present the provincial aspects, we proceed to discuss the effects of the scheme on the Government of India, where, it will be remembered, there is no transfer of subjects but a marked enlargement of popular representation The new constitution of the Indian Legislative Assembly, which will give to the non-official members a substantial majority, is bound to make its weight felt with the Government of India. The problem with which we are immediately concerned is to secure that the opinion of the Assembly should carry corresponding weight with the authorities in whom is vested the power of controlling the Government of India. It appears to us that the conception of the Reforms Scheme leads naturally to the acceptance of the principle, which we here state in general terms, that where the Government of India find themselves in agreement with a conclusion of the Legislative Assembly, their joint decision should ordinarily pre-

How can Government of India reconcile 'active supremacy' of Whitehall with increasing influence of Indian Legislative Assembly?

vail. We set out below what we conceive to be the application of the principle to the main divisions of governmental functions.

14. First as regards legislation. At the outset, we think it desirable to secure that the authority of the Legislative Assembly will not be restricted by Government intervention through the Council of State save on the direct instructions of the Secretary of State . . . We note that the words employed in clause 20(4) of the Government of India Bill, regarding certification by the Governor-General in Council, are "the safety, tranquillity, or interests of British India or any part thereof", which appear to be of somewhat wider import than those in the Joint Report.

(i) Legislation

15. In normal cases, where legislation comes before the Secretary of State, it must already have received the assent of the Governor-General, and must have been passed by a majority of votes in the Council of State and in the Legislative Assembly. But inasmuch as there is a substantial official vote in the latter body and normally an official majority in the former, it follows that the measure has not necessarily the support of a majority of the non-official members in either chamber. In order, therefore, to give proper emphasis to the legislative authority of the Assembly, we recommend that whenever legislation has the support of a majority of the non-official members of the Legislative Assembly, assent should be refused only in cases in which the Secretary of State feels that his responsibility to Parliament for the peace, order and good government of India, or paramount considerations of Imperial policy, require him to secure reconsideration of the matter at issue by the Legislative Assembly.

When should Secretary of State refuse assent to legislation?

16. In examination of the Budget, and in criticism of general administration, the Legislative Assembly can express its views only by means of resolutions; and these will continue to be advisory in character, without legal sanction. The Government may accept a resolution either because they

(ii) Budget and general administration

agree with it from the outset, or because they decide to defer to the opinion of the Assembly. Where for any reason reference to the Secretary of State is considered necessary, we recommend that a joint decision of the Government of India and a majority of the non-official members of the Assembly, reached by discussion of a resolution, should be given the same degree of authority as similar decisions on legislative proposals, and that the principle we have stated in paragraph 15 should be applied in these cases also.

'Delegation' of powers by Secretary of State

17. We now revert to the question of delegation, considered as a supplementary aspect of the scheme of Reform. We are in full sympathy with the opinion expressed by the authors of the Joint Report, that previous sanction to decisions taken in India should be required in fewer cases than in the past, and that in some matters it will suffice in future if the Secretary of State asserts his control by means of a veto if necessary. Delegation of powers is so much a matter of technical detail that we consider our function to be confined to the duty of laying down guiding principles for its regulation. The basis of delegation that we recommend is as follows: that without prejudice to the further relaxation of control by the Secretary of State, the principle of previous consultation between the Secretary of State and the Government of India should be substituted in all cases where the previous sanction of the Secretary of State in Council has hitherto been required; but the Secretary of State should from time to time revise the list of subjects on which he requires such previous consultation, and inform the Government of India accordingly. Our recommendations would apply to all projects, both legislative and financial, subject to the reservations that may be necessary for the proper discharge of the Secretary of State's Ministerial responsibilities. In regard to administrative questions, as distinct from those involving legislation or finance, the special need for delegation in the sense applied above does not arise. The administrative powers of the Government of India

Practice of 'previous consultation' on legislative and financial questions

'Delegation' in case of administrative questions

in this respect are not limited by any formal restrictions; but as a matter of constitutional practice, reference to the Home authorities is of course made on what are understood to be specially important administrative matters. It is clear that practice should be continued under the new system. We think it unnecessary to say more on this head than that the degree of discretion allowed in matters of pure administration should be enhanced in general correspondence with the wider authority to be allowed in future in matters of legislation and finance. As regards the general principle we have suggested, we assume that consultation would be real and effective in the sense that the Secretary of State would receive ample notice of the Government of India's proposals and that a full understanding between London and Delhi would be reached by a free interchange of views.

. . . in so far as provincial action comes under the cognisance of the Secretary of State, either directly or through the Government of India, he should regulate his intervention with regard to the principle which we have sought to apply to the working of the central Government, namely, that where the Government find themselves in agreement with a conclusion of the legislature, their joint decision should ordinarily be allowed to prevail.

Control of Secretary of State over provincial matters

7. INDIAN NATIONAL CONGRESS ON MONT-FORD REFORMS.

I. Resolution of Congress, Special Session, Bombay, 1918.

That this Congress appreciates the earnest attempt on the part of the Secretary of State and the Viceroy to inaugurate a system of responsible government in India, and, while it recognises that some of the proposals constitute an advance on the present conditions in some directions, it is of opinion that the proposals are disappointing and unsatisfac-

Mont-Ford proposals 'disappointing and unsatisfactory'

tory and suggests the following modifications as absolutely necessary to constitute a substantial step towards responsible government:—

Demands of Congress:

(A) *Government of India*:—

Dyarchy at the Centre

(*i*) That a system of reserved and transferred subjects, similar to that proposed for the Provinces, shall be adopted for the Central Government.

List of 'Reserved' subjects

(*ii*) That the reserved subjects shall be Foreign affairs (excepting relations with the colonies and Dominions), Army, Navy and relations with Indian ruling Princes, and subject to the Declaration of Rights contained in Resolution IV, matters directly affecting public peace, tranquillity and defence of the country, and that all other subjects should be transferred subjects.

(*iii*) The allotments required for reserved subjects should be the first charge on the revenues.

Budget

(*iv*) The procedure for the adoption of the budget should be on the lines laid down for the Provinces.

Provision for legislation

(*v*) All legislations shall be by Bills introduced into the Legislative Assembly, provided that if in the case of reserved subjects the Legislative Assembly does not pass such measures as the Government may deem necessary, the Governor-General-in-Council may provide for the same by Regulations, such regulations to be in force for one year, but not to be renewed unless 40 per cent. of the members of the Assembly present and voting are in favour of them.

Council of State

(*vi*) There shall be no Council of State, but, if the Council of State is to be constituted, at least half of its total strength shall consist of elected members, and the procedure by certification shall be confined to the reserved subjects.

Executive Council

(*vii*) At least half the number of Executive Councillors (if there be more than one) in charge of reserved subjects should be Indians.

Legislative Assembly

(*viii*) The number of members of the Legislative Assembly should be raised to 150 and the proportion of the elected members should be four-fifths.

(*ix*) The President and the Vice-President of the Legislative Assembly should be elected by the Assembly.

(*x*) The Legislative Assembly should have power to make, or modify its own rules of business and they shall not require the sanction of the Governor-General.

(*xi*) There should be an obligation to convene meetings of the Council and Assembly at stated intervals or on the requisition of a certain proportion of members.

Time limit for establishment of full Responsible Government

(*xii*) A statutory guarantee should be given that full responsible government should be established in the whole of British India within a period not exceeding 15 years.

Privy Council

(*xiii*) That there should be no Privy Council for the present.

(*B*) *The Provinces*:—

(*i*) There should be no additional members of the Executive Government without portfolios.

Responsibility of Ministers to Legislature

(*ii*) From the commencement of the first Council the principle of responsibility of the Ministers to the Legislature shall come into force.

(*iii*) The status and salary of the Ministers shall be the same as that of the members of the Executive Council.

Executive Council

(*iv*) At least half the number of Executive Councillors in charge of reserved subjects (if there be more than one) should be Indians.

Budget

(*v*) The Budget shall be under the control of the Legislature subject to the contribution to the Government of India, and during the life-time of the reformed Councils, to the allocation of a fixed sum for the reserved subjects; and should fresh taxation be necessary, it should be imposed by Provincial Governments, as a whole, for both transferred and reserved subjects.

(*C*) *Legislature*:—

'Reserved' subjects

(*i*) While holding that the people are ripe for the introduction of full Provincial Autonomy the Congress is yet prepared, with a view to facilitating the passage of the Reforms, to leave the departments of Law, Police and Justice (prisons excepted) in the hands of the Executive Government in all Provinces for a period of 6 years. Executive and Judicial Departments must be separated at once.

(*ii*) The President and the Vice-President should be elected by the Council.

Jurisdiction of Provincial Legislature

(*iii*) That the proposal to institute a Grand Committee shall be dropped. The Provincial Legislative Council shall legislate in respect of all matters within the jurisdiction of Provincial Government including Law, Justice, and Police, but where the Government is not satisfied with the decision of the Legislative Council in respect of matters relating to Law, Justice, and Police, it shall be open to the Government to refer the matter to the Government of India, and the Government of India may refer the matter to the Indian Legislature, and the ordinary procedure shall follow. But if Grand Committees are instituted, this Congress is of opinion that not less than one-half of the total strength shall be elected by the Legislative Assembly.

Grand Committee

(*iv*) The proportion of elected members in the Legislative Council shall be four-fifths.

(*E*) *Parliament and the India Office*:—

Gradual relaxation of control by Parliament and India Office

(*i*) The control of Parliament and of the Secretary of State must only be modified as the responsibility of the Indian and Provincial Governments to the electorates is increased. No power over Provincial Governments now exercised by Parliament and by the Secretary of State must be transferred to the Government of India, save in matters of routine administration, until the latter is responsible to the electorates.

(*ii*) The Council of India shall be abolished and there shall be two Permanent Under-Secretaries to assist the Secretary of State for India, one of whom shall be an Indian.

India Council to be abolished

(*iii*) All charges in respect to the India Office establishment shall be placed on the British Estimates.

(*iv*) No financial or administrative powers in regard to reserved subjects should be transferred to the Provincial Governments until such time as they are made responsible regarding them to electorates and until then the control of Parliament and the Secretary of State should continue.

(*v*) The Committee to be appointed to examine and report on the present constitution of the Council of India shall contain an adequate Indian element.

(*F*) *Representation*:—

The proportion of the Muhammadans in the Legislative Council and the Legislative Assembly as laid down in the Congress-League Scheme must be maintained.

Congress-League Scheme

II. Resolution of Congress, Delhi Session, 1918.

That this Congress . . . reaffirms the Resolution . . . relating to self-government passed at the Special Session of the Congress held in Bombay, subject to this: That in view of the expression of opinion in the country since the sitting of the said Special Session, the Congress is of opinion that:

(*a*) So far as the Provinces are concerned, full Responsible Government should be granted at once, and that no part of British India should be excluded from the benefit of the proposed Constitutional Reforms, and that,

Full Responsible Government wanted for Provinces

(*b*) The non-official Europeans should not be allowed to form separate electorates, . . . and if they are allowed such representation, they should be limited to their proportion compared to the population of the Provinces concerned.

Question of separate electorate for Europeans

III. Presidential Address of Madan Mohan Malaviya, Delhi, 1918.

Meaning of 'self-determination'

Let us make it clear what we mean when we talk of self-determination. There are two aspects of self-determination, as it has been spoken of in the Peace proposals. One is that the people of certain colonies and other places should have the right to say whether they would live under the suzerainty of one power or of another. So far as we Indians are concerned we have no need to say that we do not desire to exercise that election. Since India passed directly under the British Crown, we have owned allegiance to the Sovereign of England. We stand unshaken in that allegiance. We gladly renewed our allegiance to His Majesty the King-Emperor in person when he was pleased to visit India in 1911 after his Coronation in England. We still desire to remain subjects of the British Crown. There is, however, the second and no less important aspect of self-determination, namely, that being under the British Crown, we should be allowed complete responsible government on the lines of the Dominions, in the administration of all our domestic affairs We are not yet asking for this either. We are asking for a measure of self-government which we have indicated by our Congress-League scheme of 1916. We urge that the measure of self-government, *i e.*, of responsible government, to be given to us should be judged and determined in the light of the principle of self-determination which has emerged triumphant out of this devastating war. In order that this should be done it is not necessary that the proposals of reform which have been elaborated by Mr. Montagu and Lord Chelmsford should be laid aside and a brand-new scheme be prepared. The Special Congress and the Moslem League have expressed their willingness to accept those proposals with the modifications and improvements which they have advocated. This great Congress representing the people of all classes and creeds—Hindus, Mussalmans, Parsis and Christians—representing all interests, landholders and

India recognises allegiance to British Crown.

Dominion Status not wanted

Congress wants self-government as outlined in Congress-League scheme.

Congress represents all classes and creeds.

tenants, merchants and businessmen, educationists, publicists and representatives of other sections of the people—is assembled here to-day to express the mind of the people on this question. One special and particularly happy feature of this Congress is the presence at it of nearly nine hundred delegates of the tenant class who have come at great sacrifice, from far and near, to join their voice with the rest of their countrymen in asking for a substantial measure of self-government. The representative Congress of the people of India will determine and declare what in its opinion should be the measure of reform which should be introduced into the country. Let the British Government give effect to the principle of self-determination in India by accepting the proposals so put forward by the representatives of the people of India. Let the preamble to the Statute which is under preparation incorporate the principle of self-determination and provide that the representatives of the people of India shall have an effective voice in determining the future steps of progress towards complete responsible government. This will produce contentment and gratitude among the people of India and strengthen their attachment to the British Empire.

'Representatives of the people of India' should have 'an effective voice in determining the future steps of progress towards complete responsible government.

IV. Resolution of Congress, Amritsar Session, 1919.

India fit for 'full Responsible Government'

That this Congress reiterates its declaration of the last year that India is fit for full Responsible Government and repudiates all assumptions and assertions to the contrary wherever made.

Reform Act 'Inadequate, unsatisfactory and disappointing'

That this Congress adheres to the resolutions passed at the Delhi Congress regarding the Constitutional Reforms and is of opinion that the Reform Act is inadequate, unsatisfactory and disappointing.

That this Congress further urges that Parliament should take early steps to establish full Responsible Government in India in accordance with the principle of self-determination.

This Congress trusts that so far as may be possible they will work the Reforms so as to secure

an early establishment of full Responsible Government, and this Congress offers its thanks to Mr. E. S. Montagu[1] for his labour in connection with Reforms.

V. Presidential Address of Motilal Nehru, Amritsar, 1919.

. . . The Act is not based on the wishes of the people of India and its provisions fall short of the minimum demands made by the Congress. But let us not belittle the good that the Act does us. We must recognise that it gives us some power and opens out new avenues of service for us which had hitherto been closed to Indians. I venture to think that our clear duty in these circumstances is to make the most of what we have got and at the same time to continue to press for what is our due. . . .

* * * *

'Work the new reforms'.

I would beg of you to work the new reforms, utilise them for the betterment of the country and continue to press and agitate for our full demands.

The Act, as I have said, gives us some power, but it does not give us free citizenship or the power to check the misuse by the executive of the functions of law and order . . . No constitution can meet our needs unless it is accompanied with a guarantee and a clear declaration of our elementary rights which have recently been so ruthlessly violated in the Punjab[2]. . . .

The sum total of the reserved powers in the hands of the Government or Governor-General in respect of legislation is indeed enormous. . . .

Censure on Lord Chelmsford

[1] The following resolution was adopted by the Amritsar Session of the Congress in 1919: "In view of the fact that Lord Chelmsford has completely forfeited the confidence of the people of this country, the Congress humbly beseeches His Imperial Majesty to be graciously pleased immediately to recall His Excellency."

[2] The reference is to the Massacre of Jallianwallabagh and the atrocities committed by British Officers in other parts of the Punjab.

If the powers of the Governors and Governor-General in legislation are so wide and unrestricted, their powers in regard to the Budget appear to me on close examination nearly as wide and far-reaching... 'Enormous reserved powers' of Governor-General

* * * *

The Congress demand for the realisation of responsible government within a definite time limit was not acceded to, when the Montagu-Chelmsford scheme was framed, and in its place there was provided a series of enquiries at the end of 5 and 10 years respectively for the further transference of provincial subjects to popular control. Some of our countrymen welcomed these enquiries, because they looked like the old periodical Parliamentary enquiries into Indian affairs, which the Congress had asked to be revived in its earlier years. They also hoped successfully to survive the test and investigation that would be made and, like Oliver Twist, to go forward again and ask for more. The injustice of submitting a nation's birth-right to the jurisdiction and decisions of an outside body or committee was on the other hand deeply resented by many others, who felt that any such submission to jurisdiction and consequent acceptance of verdict would be essentially wrong and unworthy of the self-respect of Indians. . . . Provision for Parliamentary enquiries

Perhaps the most serious omission in the Act, as finally passed by both houses, is that it fails to provide for any transference of administrative or political powers to the representatives of the people in the Central Government. . . . Irresponsible Central Government

VI. Resolution of Congress[1], 1920.

In view of the fact that, in the matter of the events of the April of 1919, both the said Governments have grossly neglected or failed to protect the innocent people of the Punjab and punish officers guilty of unsoldierly and barbarous behaviour towards them, and have exonerated Sir Michael O'Dwyer who proved himself directly responsible Jallianwalabagh Massacre

[1] This resolution was moved by Gandhiji and adopted by the Congress in September, 1920.

for most of the official crimes and callous to the sufferings of the people placed under his administration and that the debate in the House of Lords betrayed a woeful lack of sympathy with the people of India, and systematic terrorism and frightfulness adopted in the Punjab, and that the latest Viceregal pronouncement is proof of entire absence of repentance in the matters of the Khilaphat and the Punjab,

'Establishment of Swarajya' needed

this Congress is of opinion that there can be no contentment in India without redress of the two aforementioned wrongs, and that the only effectual means to vindicate national honour and to prevent a repetition of similar wrongs in future is the establishment of Swarajya;

Adoption of non-violent non-co-operation

this Congress is further of opinion that there is no course left open for the people of India but to approve of and adopt the policy of progressive non-violent Non-co-operation inaugurated by Mahatma Gandhi until the said wrongs are righted and Swarajya is established.

Necessity of non-co-operation

And inasmuch as a beginning should be made by the classes who have hitherto moulded and represented public opinion and inasmuch as Government consolidates its power through titles and honours bestowed on the people, through schools controlled by it, its Law Courts and its Legislative Councils, and inasmuch as it is desirable in the prosecution of the movement to take the minimum risk and to call for the least sacrifice compatible with the attainment of the desired object, this Congress earnestly advises,

Programme of non-co-operation

(a) surrender of titles and honorary offices and resignation from nominated seats in Local Bodies;

(b) refusal to attend Government levees, durbars, and other official and semi-official functions held by Government officials, or in their honour;

(c) gradual withdrawal of children from schools and colleges owned, aided or controlled by Government, and, in place of such schools and

colleges, the establishment of national schools and colleges in the various Provinces;

(*d*) gradual boycott of British courts by lawyers and litigants, and the establishment of private arbitration courts by their aid for the settlement of private disputes;

(*e*) refusal on the part of the military, clerical and labouring classes to offer themselves as recruits for service in Mesopotamia;

(*f*) withdrawal by candidates of their candidature for election to the Reformed Councils, and refusal on the part of the voters to vote for any candidate who may, despite the Congress advice, offer himself for election;

(*g*) boycott of foreign goods.

And inasmuch as Non-co-operation has been conceived as a measure of discipline and self-sacrifice without which no nation can make real progress, and inasmuch as an opportunity should be given in the very first stage of Non-co-operation to every man, woman and child for such discipline and self-sacrifice, this Congress advises adoption of Swadeshi in piece-goods on a vast scale, and inasmuch as the existing mills of India with indigenous capital and control do not manufacture sufficient yarn and sufficient cloth for the requirements of the Nation, and are not likely to do so for a long time to come, this Congress advises immediate stimulation of further manufacture on a large scale by means of reviving hand-spinning in every house and hand-weaving on the part of the millions of weavers who have abandoned their ancient and honourable calling for want of encouragement.

Adoption of Swadeshi

VII. Undelivered Presidential Address of C. R. Das, 1921.

Now the Preamble of the Act is the key to the situation. "Whereas it is the declared policy of Parliament," so the Preamble runs. What is the declared policy of Parliament? To recognise the

inherent right of the Indians to responsible government? Not at all. To recognise the inherent right of India to be treated as a free and equal partner of the commonwealth of nations known as the British Empire? Not at all. But, mark the timid concession to the rights of India: "To provide for the increasing association of Indians in every branch of Indian administration and for the gradual development of self-governing institutions with a view to the progressive realization of responsible government in British India as an integral part of the Empire." I do not think a more halting concession could ever be made to the rights of a people. Now, is there anything in the Preamble to compel the British Parliament to recognise India, at any time, as a free and equal partner of the British Empire? I think not. "Progressive realization of responsible government in British India"! These are vague words, and they will not, at any time, tax the ingenuity of a British statesman. Omitting the second paragraph and coming to the third, we find: "that the time and manner of each advance can be determined only by Parliament upon whom responsibility lies for the welfare and advancement of the Indian peoples." Mark the word "peoples," not "people"—an assertion by Parliament that India is not one, but many. I, for one, am not prepared to submit to the insult offered to India in the third paragraph of the Preamble, and I feel bound to protest against it. We are quite prepared to undertake the responsibility for the welfare and advancement of the Indian people (not peoples), and I altogether deny that a foreign Parliament can possibly discharge its responsibilities in relation to a subject nation. I resent the doctrine that Parliament is to determine the time and manner of each advance, and I say that the whole object of the legislation, as disclosed in the third paragraph of the Preamble, is to perpetuate the domination of the British Parliament, which I cannot for a moment accept. The fourth paragraph holds out a distinct threat: "And whereas the action of Parliament," so it says, "in such matters must be guided

Criticism of Preamble of Act of 1919

'Timid and halting' concession to rights of India

'Peoples' of India

Why should Parliament determine time and manner of each advance ?

by the co-operation received from those on whom new opportunities of service will be conferred, and by the extent to which it is found that confidence can be reposed in their sense of responsibility." In other words, if we are good boys, and if we satisfy the British Parliament that we have a sense of responsibility, then the British Parliament will consider whether we ought not to have a further instalment of reforms. In other words, we are perpetual infants, and the British Parliament is our sole guardian.

Indians are 'perpetual infants'.

Ladies and Gentlemen, I have very great respect for the opinion of my political opponents, but I cannot accept the fundamental principle on which the Reform Act is based. I think that we should preserve our India's self-esteem, whatever the stage of our progress may be. I think that we should solemnly declare in open Congress, that freedom is inherent in every nation and that India has and possesses the right to develop her own individuality and to evolve her own destiny unhampered by what the British Parliament has decided or may decide for us. I think we should recognise that any power that in any way hampers or embarrasses the self-realization and self-fulfilment of the Indian nation is an enemy of India and must as such be resisted. I am willing to co-operate with England, but on one condition only, that she recognises this inherent right of India. That recognition you will not find anywhere in the Government of India Act, and I for one will not be a party to the perpetuation of British domination in India.....Freedom is my birth-right, and I demand a recognition of that right, not by instalments nor in compartments, but whole and entire. I do not doubt that victory will be on our side; but supposing we fail, we would at least have preserved inviolate our national self-respect and dignity, we would at any rate have repudiated the insult on which the Government of India Act is based. The differences between the Indian National Congress and the Ministers who are working the

India's inherent right to freedom

Difference between Congress and 'Ministers who are working the Reforms Act'

Reforms Act seems to be fundamental, in that the former has its eye fixed on the ultimate and would reject as essentially false anything that does not recognise the freedom of the Indian people, whereas the latter have their eyes fixed on the departments of which they are in charge, and hope to attain freedom through the successful working of those departments.

Position of Ministers in Provinces in respect of 'Reserved' subjects

I will now consider whether the Act gives even the beginnings of responsible government to India, and whether the Legislature has any control over the purse. The two questions must be considered together. It is the view of the Moderates in Bengal that out of seven members of the Bengal Government, five are Indians. The view is entirely erroneous. I think I am right in saying that provinces are governed, in relation to reserved subjects, by the Governor-in-Council, and in relation to transferred subjects, by the Governor, acting with Ministers. The statute makes no provision whatever for the joint deliberation by the Governor and his Council and his Ministers sitting together, except in regard to proposals for taxation and borrowing, and the framing of proposals for expenditure of public money. In regard to the reserved subjects, and these are subjects which are of vital importance to us as a nation in our struggle for political liberty, the Ministers have no voice whatever. I think I am right in saying that they are the dumb spectators of the fight that is now going on between us and the Government. They are not part of the Government to consider whether, in relation to the non-co-operation movement, a repressive policy should or should not be initiated in the country. Their advice will not be sought when the Local Government has to consider the question whether Mahatma Gandhi ought or ought not to be arrested. If I am right in my view as to the position of the Ministers in relation to reserved subjects, then I suggest to my Moderate friends that they are under an entire misapprehension when they say that majority of the members of

'Dumb spectators'

the Government are Indians. The truth is, that in relation to the reserved subjects, the Indian element is in a minority and cannot affect the policy of the Government in the slightest degree, provided the Governor and the English members of the Council combine against it.

Position of Ministers in Provinces in respect of 'Transferred' subjects

I have now to consider the position of the Ministers and the relation between the Ministers and the Legislature in regard to the transferred subjects. My first point is, that it is a mistake to suppose that any "subject" has been transferred to the Ministers. I concede that certain departments have been transferred, but I maintain that they have been transferred subject to the encumbrances created by a century of bureaucratic rule, and the Ministers have no power whatever to discharge those encumbrances.

Provincial Legislature has no control over the purse.

This brings me to a question of great importance, and that is whether the Legislature has any control over the purse. The Moderates maintain the affirmative of the proposition; I maintain the negative. I shall presently refer to the provisions of the Act to support my position; but I have a witness of undoubted position and respectability in my favour, whose evidence I should like to place before you. In the course of the general discussion on the budget in one of the Councils, a Minister said as follows: "The two poor men who have been put down here as Ministers are presented to be clothed with all the powers of Ministers in the House of Commons, and therefore they are called upon to account for everything for which perhaps a Minister in the House of Commons is responsible.....The Minister here begins his life by getting a dole of money that is given by those who are in charge of the whole administration."

Testimony of a Minister

Under the rules framed under the Government of India Act, the framing of proposals for expenditure in regard to transferred and reserved subjects is a

remembered, the Minister is not a Member) to examine and advise on the scheme of the new expenditure for which it is proposed to make provision in the estimates.

This, then, is the scheme which is being worked by the Ministers, and we have been solemnly assured by the Moderates that the beginning of Swaraj is to be found in the scheme. Much as I would like to end all unnecessary conflict, I cannot recommend to you the acceptance of the Act as a basis for co-operation with the Government. I will not purchase peace with dishonour, and so long as the Preamble to the Government of India Act stands and our right, our inherent right to regulate our own affairs, develop our own individuality and evolve our own destiny, is not recognised, I must decline to consider any terms of peace.

Act of 1919—not a proper basis for co-operation

"I will not purchase peace with dishonour".

VIII. Presidential Address of S. Srinivasa Aiyangar, Gauhati, 1926.

That Dyarchy is neither a helpful stage in the progressive realisation of Responsible Government nor serves as an apt machinery for grinding down good government, has been the unanimous verdict of experience and is now practically admitted on all hands. Lord Birkenhead himself has referred to it more than once in apologetic terms though he insists upon our working it. Its true purpose is not merely to provide for the administration of certain subjects by the Governor and his Executive Council, but to attenuate the power of the Ministers and the control of the Legislature over the transferred subjects. Under this grotesque system, the Ministers are always under official tutelage and domination so that they cannot breathe the oxygen of freedom. The joint deliberation between Ministers and Members of Council for which Lord Willingdon took credit proved to be in the interests of the reserved half. Even without it, most matters relating to transferred subjects require to be considered by those in charge of

Criticism of Dyarchy

Position of Ministers

the reserved departments and to that extent are shaped by the opinion of that half of the Government. This was fully established by the evidence before the Reforms Inquiry Committee. The fact that members of the Civil Service are themselves Members of Government makes the Ministers helpless in their relation to the members of the Civil Service. Again, the rules relating to financial restrictions and the control exercised by the Finance Member as one in charge of a reserved subject over important aspects of transferred subjects, make the power of the Ministers as unreal as that of puppets. Lastly, the division of subjects between the reserved and the transferred halves is such that the pith and marrow of a government are with the former. As regards the conflicts between the two halves of the Government, the Governor is made in effect a constitutional dictator in the province, and Dyarchy can be tempered only by the frequent exercise of his powers. Further, the power of the Governor on his sole authority to make laws relating to a reserved subject contrary to the decision of the Legislative Council furnishes a capital instance where the reformed Legislative Councils possess much less power than their predecessors. That one man can make laws quite as valid as the laws made by a Legislature and in the teeth of the latter, proves our charge that the Reform Act has in reserved departments set up an irresponsible autocracy.

Over-whelming importance of 'Reserved' subjects

'Irresponsible autocracy'

The position as regards transferred subjects is no whit better, though we frequently make Dyarchy the gravamen of our charge against the Reform Act as if its removal alone will end all our troubles. For, we must remember that in respect of transferred subjects there is no responsible government and the mere transfer of reserved subjects to additional Ministers on the same statutory conditions as at present govern transferred subjects will not improve matters. At the outset, each Legislative Council has a solid block of nominated and official members to support the views or policy of the bureaucracy on questions

No responsible government even in respect of 'Transferred' subjects

relating to transferred subjects though a majority of elected members may decide otherwise. Thanks to the nominated members and to the number of special constituencies, supple, reactionary or obscurantist, the composition of a Legislative Council is such that the Ministers have to depend upon the support of the Governor and his Executive Council. Nor is it very difficult for a Governor to form, against a majority group of elected members, a Ministry with the aid of a minority group of elected members and of his own nominated and protected bloc. This has been done again and again in every province. This inherent vice in the structure of a Legislative Council deprives it of any real representative character and its elected members of any adequate power. Secondly, under existing conditions, the power of appointing Ministers exercised by a Governor is not a mere technical mode of naming the established leaders of the majority in the Council but is a substantial power of patronage by which a nobody or any body can be made a *benami* leader to carry out the Governor's policy. Thirdly, we all know that a Legislative Council has no control over the items of expenditure known as non-votable under each transferred head including the salaries and allowances and all other payments of officials belonging to superior services in that department. These non-votable items amount to a high percentage of the expenditure relating to each transferred subject. Fourthly, the Ministers have little or no control over the members of the Civil or other public services serving in departments dealing with transferred subjects, and the Governor has and exercises the power of making all appointments to posts in the transferred departments. The statutory independence of the Indian Civil Service is the most outstanding feature of the Reform Act. All the parliamentary apparatus of a responsible government will prove to be a costly and pompous futility unless the completest control over Indian Civil and other Services is unreservedly secured to Ministers fully responsible to a wholly

Composition of the Legislature

Governor's power to appoint Ministers

'Non-votable' items of expenditure

Position of the Indian Civil Service

Governor's special powers

elected legislature. Fifthly, the Governor is empowered to over-ride the Minister's decisions on questions relating to a transferred subject and direct him to act otherwise. Sixthly, the Governor has an emergency power—the emergency to be determined by himself—to authorise expenditure notwithstanding a vote of the Legislative Council in respect of transferred subjects. Seventhly, the Governor has power to stop legislation in respect of transferred subjects notwithstanding the opinion of the Legislative Council. Eighthly, he can return a Bill relating to a transferred subject to the Council for reconsideration with his recommendations which are in effect obligatory What this power means was forcibly illustrated by Lord Willingdon in Madras in connection with the Hindu Religious Endowments Bill. Ninthly, when a Governor cannot through his Ministry manage a Council to his satisfaction, he can himself administer the transferred subjects as happened in the Central Provinces. Tenthly, a Minister can hold office during the Governor's pleasure which does not mean the formal expression of the Council's pleasure but his own independent pleasure against the opinion of the Council, as was vividly demonstrated by Lord Lytton in Bengal Eleventhly, the Governor is entitled to disallow any motion for the adjournment of the business of the Council to discuss a definite matter of urgent public importance even when it relates to a transferred subject. Lastly, the allocation of the revenues for the administration of transferred subjects depends primarily on the will of the reserved half and of the Governor and not on the decision of the Legislative Council.

I have restated the position under the Act only to make it clear that even if Dyarchy goes, a Legislative Council will have control over the transferred subjects only if and when the Governor allows and not otherwise.

The Majority Report of the Reforms Inquiry Committee concedes that the Dyarchy which was introduced is "clearly a complex confused system

having no logical basis, rooted in compromise and defensible only as a transitional expedient.'' It is not possible to imagine to what it is a transition or how it is defensible except as an expedient for putting off the grant of Swaraj or of substantial reforms leading to Swaraj.

Views of the Muddiman Committee on Dyarchy

Nor can it be pretended that the Central Government is at all responsible to the Indian Legislature. In the first place, that Legislature has no power of the purse. Nearly three-fourths of the expenditure of the Government of India, excluding that on Railways, is withdrawn from the vote of the Legislative Assembly, and as to the remaining fourth, the Government is empowered to restore any demand which has been refused or reduced by it. The Governor-General has also an emergency power to authorise at his discretion any expenditure, he being the sole judge of the emergency. In the next place, the Governor-General may direct the stay of any bill, clause or amendment. In the third place, in addition to the power to make temporary ordinances, the Governor-General is given, what he had not before the Reforms Act, the autocratic power of certifying any bill and signing it as a permanent law on his sole and absolute authority notwithstanding the refusal of the Legislature. Fourthly, the Assembly is neither wholly nor in reality a representative and democratic chamber. Between a third and a fourth of its strength consists of nominated members and a three-fourths majority of elected members is required to defeat the Government and to enforce the popular will . . . Lastly, there is for the Government the additional safeguard provided by the second chamber. And the Council of State is so planned and constructed as to checkmate the Assembly and to form an impregnable citadel for the Government.

Central Government not responsible to Legislature

'Legislature has no power of the purse.'

Governor-General's control over legislation

Legislature not a representative and democratic chamber

It is then abundantly clear, that the centre of gravity both in the Central Government and the Provinces, alike in transferred and in reserved departments, when analysed closely, is, both in fact

and in constitutional theory, in the Executive Government, in other words, in the bureaucracy. It would therefore be a tragedy if we still sought to discover, in this statutory hypocrisy, the germs of self-government.

"Statutory hypocrisy"

8. INSTRUMENT OF INSTRUCTIONS TO THE GOVERNOR-GENERAL[1], 1921.

VI. And inasmuch as the policy of Our Parliament is set forth in the Preamble to the said Government of India Act, 1919, We do hereby require Our said Governor-General to be vigilant that this policy is constantly furthered alike by his Government and by the Local Governments of all Our Presidencies and Provinces.

VII. In particular it is Our will and pleasure that the powers of superintendence, direction and control over the said Local Governments, vested in Our said Governor-General and in Our Governor-General in Council shall, unless grave reason to the contrary appears, be exercised with a view to furthering the policy of the Local Governments of all Our Governors' Provinces, when such policy finds favour with a majority of the Members of the Legislative Council of the Province.

VIII. Similarly it is Our will and pleasure that Our said Governor-General shall use all endeavour consistent with the fulfilment of his responsibilities to Us and to Our Parliament for the welfare of Our Indian subjects, that the administration of the matters committed to the direct charge of Our Governor-General in Council may be conducted in harmony with the wishes of Our said subjects as expressed by their representatives in the Indian Legislature, so far as the same shall appear to him to be just and reasonable.

Political goal of India

IX. For above all things it is Our will and pleasure that the plans laid by Our Parliament for the progressive realisation of responsible government in British India as an integral part of Our Empire

[1] Issued on 15th March, 1921.

may come to fruition, to the end that British India may attain its due place among Our Dominions. Therefore, We do charge Our said Governor-General by the means aforesaid and by all other means which may to him seem fit to guide the course of Our subjects in India whose governance We have committed to his charge so that, subject on the one hand always to the determination of Our Parliament, and, on the other hand, to the co-operation of those on whom new opportunities of service have been conferred, progress towards such realisation may ever advance to the benefit of all Our subjects in India.

9. INSTRUMENT OF INSTRUCTIONS TO GOVERNORS, 1921.

Whereas by the Government of India Act, provision has been made for the gradual development of self-governing institutions in British India with a view to the progressive realization of Responsible Government in that country as an integral part of Our Empire;

Provision for "the progressive realization of Responsible Government"

And whereas it is Our will and pleasure that, in the execution of the Office of Governor in and over the Presidency of Fort William in Bengal,[1] you shall further the purposes of the said Act, to the end that the institutions and methods of government therein provided shall be laid upon the best and surest foundations, that the people of the said Presidency shall acquire such habits of political action and respect such conventions as will best and soonest fit them for self-government, and that Our authority and the authority of Our Governor-General in Council shall be duly maintained;

Governor shall "further the purposes" of Act of 1919.

Now, therefore, We do hereby direct and enjoin you and declare Our will and pleasure to be as follows:

I. You shall do all that lies in your power to maintain standards of good administration; to

[1] Similar instructions were issued to Governors of other Provinces.

Governor to promote religious toleration, financial stability, etc.

encourage religious toleration, co-operation and goodwill among all classes and creeds; to ensure the probity of public finance and the solvency of the Presidency; and to promote all measures making for the moral, social, and industrial welfare of the people, and tending to fit all classes of the population without distinction to take their due share in the public life and government of the country.

Redress of grievances through representative institutions

II. You shall bear in mind that it is necessary and expedient that those now and hereafter to be enfranchised shall appreciate the duties, responsibilities and advantages which spring from the privilege of enfranchisement; that is to say, that those who exercise the power henceforward entrusted to them of returning representatives to the Legislative Council, being enabled to perceive the effects of their choice of a representative, and that those who are returned to the Council, being enabled to perceive the effects of their votes therein, shall come to look for the redress of their grievances and the improvement of their condition to the working of representative institutions.

Dyarchy

III. Inasmuch as certain matters have been reserved for the administration according to law of the Governor in Council, in respect of which the authority of Our Governor-General in Council shall remain unimpaired, while certain other matters have been transferred to the administration of the Governor acting with a Minister, it will be for you so to regulate the business of the government of the Presidency that, so far as may be possible, the responsibility for each of these respective classes of matters may be kept clear and distinct.

Joint deliberation between Executive Councillors and Ministers

IV. Nevertheless, you shall encourage the habit of joint deliberation between yourself, your Councillors and your Ministers, in order that the experience of your official advisers may be at the disposal of your Ministers, and that the knowledge of your Ministers as to the wishes of the people may be at the disposal of your Councillors.

V. You shall assist Ministers by all the means in your power in the administration of the Transferred subjects, and advise them in regard to their relations with the Legislative Council. Governor's relations with Ministers

VI. In considering a Minister's advice and deciding whether or not there is sufficient cause in any case to dissent from his opinion, you shall have due regard to his relations with the Legislative Council and to the wishes of the people of the Presidency as expressed by their representatives therein.

VII. But in addition to the general responsibilities with which you are, whether by Statute or under this Instrument, charged, We do further hereby specially require and charge you: Special responsibilities of Governor:

(1) to see that whatsoever measures are, in your opinion, necessary for maintaining safety and tranquillity in all parts of your Presidency and for preventing occasions of religious or racial conflict, are duly taken, and that all orders issued by Our Secretary of State or by Our Governor-General in Council on Our behalf to whatever matters relating are duly complied with; (i) 'safety and tranquillity'

(2) to take care that due provision shall be made for the advancement and social welfare of those classes amongst the people committed to your charge, who, whether on account of the smallness of their number or their lack of educational or material advantages or from any other cause, specially rely upon Our protection, and cannot as yet fully rely for their welfare upon joint political action, and that such classes shall not suffer, or have cause to fear, neglect or oppression; (ii) advancement of minorities and backward classes

(3) to see that no order of your Government and no Act of your Legislative Council shall be so framed that any of the diverse interests of or arising from race, religion, education, social condition, wealth or any other circumstance, may receive unfair advantage, or may unfairly be deprived of (iii) no discrimination against any class

privileges or advantages which they have heretofore enjoyed, or be excluded from the enjoyment of benefits which may hereafter be conferred on the people at large,

(iv) protection of Services

(4) to safeguard all members of Our services employed in the said Presidency in the legitimate exercise of their functions, and in the enjoyment of all recognized rights and privileges, and to see that your Government order all things justly and reasonably in their regard, and that due obedience is paid to all just and reasonable orders and diligence shown in their execution;

(v) no monopoly of commercial or industrial interest

(5) to take care that, while the people inhabiting the said Presidency shall enjoy all facilities for the development of commercial and industrial undertakings, no monopoly or special privilege which is against the common interest shall be established, and no unfair discrimination shall be made in matters affecting commercial or industrial interests.

VIII. And We do hereby charge you to communicate these Our Instructions to the Members of your Executive Council and your Ministers and to publish the same in your Presidency in such manner as you may think fit.

10. INDIAN NATIONAL CONGRESS AND REFORMED LEGISLATURES.

I. Presidential Address of C. R. Das, Gaya, 1922.

'Boycott from without'

Hitherto we have been boycotting the Councils from outside. We have succeeded in doing much—the prestige of the Councils is diminished, and the country knows that the people who adorn these chambers are not the true representatives of the people. But though we have succeeded in doing much, these Councils are still there. It should be the duty of the Congress to boycott these Councils more effectively from within. Reformed Councils are really a mask which the Bureaucracy has put on.

'Boycott from within'

I conceive it to be our clear duty to tear this mask from off their face. The very idea of boycott implies, to my mind, something more than mere withdrawal. The boycott of foreign goods means that such steps must be taken that there may be no foreign goods in our markets. The boycott of the Reformed Councils, to my mind, means that such steps must be taken that these Councils may not be there to impede the progress of Swaraj. The only successful boycott of these Councils is either to mend them in a manner suitable to the attainment of Swaraj or to end them completely. That is the way in which I advise the nation to boycott the Councils.

* * * *

'No construction is possible without destruction'.

Another question is often asked: suppose we end these Reformed Councils—what then? Could not the same question be asked with regard to every step the Congress has hitherto undertaken in the way of breaking, of destroying institutions? If we had succeeded in destroying the Educational Department, might not somebody ask—what then? If we had succeeded in destroying the legal institutions, might not the question be put with equal relevance? The fact is, destruction itself will never bring us Swaraj The fact further is that no construction is possible without destruction. We must not forget that it is not this activity or that activity which by itself can bring Swaraj. It is the totality of our national activity in the way of destruction and in the way of creation, that will bring Swaraj. If we succeed in demolishing these Reformed Councils, you will find the whole nation astir with life. Let them put other obstacles in our way; we shall remove them with added strength and greater vitality.

II. Manifesto of Swarajya Party[1], 1923.

The demand to be made by the members of the Party on entering the Legislative Assembly will . . . in effect be that the right of the people of India to control the existing machinery and system of

[1] October 14, 1923

People's right 'to control the existing machinery and system of Government' must be recognised and implemented.

Government shall forthwith be conceded and given effect to by the British Government and the British Parliament. It is no answer to this demand to say that the Government of India has no power under the Act to entertain it. We know it has not and we do not ask it to find some power within the four corners of the Act to deal with it. It has indeed nothing whatever to do with the forms prescribed for resolutions, or other motions, or with the Act itself. We take the position of the Government of India to be precisely what the late Lord Morley said, *viz.* it was that of an agent of the British Cabinet. The demand will be addressed to the principal through the accredited agent as soon as practicable after the results of the elections are declared and before the legislative session begins, in such manner and form as the elected members of the Party may determine It will in its nature be an offer of certain terms which it will be for the agent to accept or refuse on behalf of the principal or take such other action thereon as he may be advised.

Government of India, being an 'agent' of British Government, must deal 'on behalf of the principal' with the people's demand

The attitude of the elected members of the Party in the Assembly and the Councils will depend on the action taken by the Government on the demand formulated by them on the lines indicated above. If the right itself is conceded it will be a matter for negotiation between the Government and the Nationalist members in the Assembly as to the manner in which the right is to be given effect to. But in the event of the Government refusing to entertain the said demand or, after agreeing to do so, offering terms which are not acceptable, it shall be the duty of the members of the Party elected to the Assembly and the Provincial Councils, if they constitute a majority, to resort, in the words of the Party Programme, to a policy of 'uniform, continuous and consistent obstruction with a view to make Government through the Assembly and Councils impossible.' The objection that the Government will not have sufficient time between the date on which demand is made and the opening session of the

How Swarajya Party members in Legislatures will act:

(i) Negotiation

(ii) Obstruction

Legislature to consider it is met by the publication of this manifesto which indicates clearly the essential features of the demand and copies of which are being forwarded to the India Office and the Government of India. There is ample time between now and January 1924 for the Government to be prepared to make up its mind at least as to whether it will dismiss the demand summarily or try to arrive at a settlement. In the former case the course to be adopted by the Party members of the Assembly and the Councils has been clearly indicated above. In the latter it will be easy to arrange the terms and conditions on which the negotiations are to proceed.

Government must choose between acceptance and rejection of demand.

III. Policy and Programme of Swarajya Party[1], 1924.

Whereas by the programme adopted at Allahabad on the 23rd February, 1923, the Party declared that its policy shall include, on the one hand, all such activity as stands to create an atmosphere of resistance making Government by bureaucracy impossible with a view to enforce our national claims and vindicate our national honour, and on the other hand, shall include for the said purpose all steps necessary for the gradual withdrawal of that co-operation by the people of this country without which it is impossible for the bureaucracy to maintain itself;

'Atmosphere of resistance making Government by bureaucracy impossible'

And whereas the application of the said principle to the existing facts of our national life with special reference to the varying attitude of bureaucratic Government which rules that life demands that such principle must include self-reliance in all activities which make for the healthy growth of the nation, and resistance to the bureaucracy as it impedes our progress towards Swarajya;

'Self-reliance. . . . for the healthy growth of the nation'

And whereas in the light of the experience gained in the Assembly and the different Councils, and in view of the recent developments in the

[1] Approved by All-India Swarajya Party Conference, August, 1924.

political situation in India, it has become necessary in the best interest of the country to restate the policy and programme of the Party in detail, having regard to the said principle;

Now, the Swarajya Party declares that the guiding principle of the Party is self-reliance in all activities which make for the healthy growth of the nation and resistance to the bureaucracy as it impedes the nation's progress towards Swarajya, and, in giving effect to the said principles, the Party resolves to adopt the following programme, that is to say:

Programme of work within Legislatures:

1. Within the Legislative bodies, the Party shall, whenever possible,

(i) Budgets,

(a) refuse supplies and throw out Budgets unless and until the system of Government is altered in recognition of our rights or as a matter of settlement between the Parliament and the people of India,

(ii) Legislation,

(b) throw out all proposals for legislative enactments by which the bureaucracy proposes to consolidate its powers,

(c) move resolutions and introduce and support measures and Bills which are necessary for the healthy growth of national life and the consequent displacement of the bureaucracy,

(iii) Co-operation with Congress

(d) help the constructive programme of the Indian National Congress,

(iv) Economic policy

(e) follow a definite economic policy to prevent the drain of the public wealth from India by checking all activities leading to exploitation and to advance the national, economical, industrial and commercial interests of the country,

(f) protect rights of labour, agricultural and industrial, and adjust the relations between landlords and tenants, capitalists and workmen.

No acceptance of office

2. No member of the Party shall accept any office in the gift of the Government with or without salary or other remuneration.

3. With a view to make the work of the Party effective, it shall be open to its members of the Assembly and various Provincial Councils to seek election to every post and place in the Assembly or the Councils and on their Committees which may be open to them for election.

Provided that no member shall seek election in contravention of any rules framed by the members of the Party in the Assembly or any of the Councils as the case may be.

4. In all other matters members of the Party in the Assembly and the Councils shall be guided by their own rules which shall be submitted for the sanction of the Executive Council as soon after they are framed as convenient, provided that any of the said rules disapproved by the Executive Council shall cease to have effect from the date when such disapproval is communicated to the members concerned.

IV. Presidential Address of Jawaharlal Nehru, Lahore, 1929.

Policy of Council entry should be grown up.

I feel that the step the Congress took some years ago to permit Congressmen to enter the Councils was an inevitable step and I am not prepared to say that some good has not resulted from it. But we have exhausted that good and there is no middle course left today between boycott and full co-operation. All of us know the demoralisation that these sham legislatures have brought in our ranks and how many of our good men, their committees and commissions lure away. Our workers are limited in number and we can have no mass movement unless they concentrate on it and turn their back to the palatial Council Chambers of our Legislatures. And if you declare for independence, how can we enter the Councils and carry on our humdrum and profitless activities there? No programme or policy can be laid down for ever, nor can this bind the country or even itself to pursue one line of action indefinitely. But today I would respectfully urge the Congress that the only policy

in regard to the Councils is a complete boycott of them. The All-India Congress Committee recommended this course in July last and the time has come to give effect to it.

'Real struggle'

This boycott will only be a means to an end. It will release energy and divert attention to the real struggle which must take the shape of the non-payment of taxes, where possible, with the co-operation of the labour movements, general strikes.

11. INDIAN NATIONAL CONGRESS AND THE MUSLIMS[1].

Why Muslims did not join Congress at first

. . . When, in 1885, some Indian leaders, assisted by their British sympathisers, founded the Indian National Congress, the Mussalmans of India did not participate in the movement except in a few individual cases. If their lack of Western education made them unfit to take part in a movement essentially that of the classes educated according to Western notions, their political temper made them an element that was not unlikely to prove dangerous to any political movement. They had already lost the rule of India, but the tradition of that rule had survived. This had increased the aversion they had always felt for the new type of education. The rule of India had finally passed from Muslim into English hands by slow and hardly perceptible degrees in the hundred years that intervened between the battle of Plassey and the Indian Mutiny; but the Mussalmans had not ceased to regard the rulers of India as something very inferior to themselves in civilisation and culture. This storm of ill will and disdain had been gathering force for a whole century, and was at last precipitated in 1857. The Mutiny began near Calcutta as an affair of the Indian army, but in the storm-centre of Delhi and of my own Province, where it had to be fought out if English rule was to continue in India, it soon attracted to itself many

The Muslims and the Mutiny

[1] Presidential Address of Maulana Mohammad Ali, Cocanada, 1923.

forms of discontent, and religion was inextricably mixed up with politics. Although so many Mussalmans had, at enormous risk to themselves, assisted the British at a time when hardly any one could have predicted their eventual success with any degree of assurance, it was the Muslim aristocracy in those parts that suffered most from the terrible aftermath of the Mutiny. In fact, in its permanent results, even more than in some of the terrors, it could, without any great exaggeration, be compared to the social upheaval that the French Revolution meant to the old nobility of France. The remnants of Muslim aristocracy, deprived of all influence and of many of its possessions, certainly did not expect the return of Muslim rule. Nevertheless, a whole generation of Mussalmans kept sullenly aloof from all contact with the culture of the new rulers of India which in their heart of hearts they still despised. They were in no mood to take advantage of the education provided by the Universities of Calcutta, Bombay and Madras, founded in the very year in which the Mutiny convulsed the regions which formed the political centre of Muslim India. It was a natural consequence of this attitude of Mussalmans who sulked in their tents that when, nearly thirty years later, a new generation of Indians, who owed their education to the English, inaugurated a political movement on Western lines, Indian Mussalmans should be unfit by lack of such education to participate in that movement. Nevertheless, the Congress which called itself "Indian" and "National" felt the need of Muslim participation, for it could not justify its title without it.

Repugnance to Western education

Efforts were therefore made early enough to enlist Mussalmans as delegates. But at this juncture, Sir Syed Ahmad Khan, the great pioneer of Western education among Mussalmans, stepped into the political arena, and in two historic speeches, one delivered at Lucknow on the 28th December, 1887, and the other at Meerut on the 16th March, 1888, decisively checked whatever signs the Mussalmans had shown of political activity in support of the

Sir Syed Ahmad prevented Muslims from joining Congress.

Congress movement. It is by no means a difficult task to criticise those speeches, for they contained many fallacies to which no politically-minded Mussalman could subscribe today. But I am not one of those who declare, merely on the strength of some ill-advised expressions characteristic of so militant a controversialist as Syed Ahmad Khan, that he was opposed to the co-operation of Hindus and Mussalmans.

Sir Syed Ahmad was 'an ancient patriot inspired with the love of Indian unity'

Although his own public career after retirement from Public Service was identified with a movement for the uplift of his own community, he was a good Indian as well as a good Muslim, and many of his speeches prove him to have been an ardent patriot inspired with the love of Indian unity. And those who knew him personally can testify to the staunchness of his friendship with many Hindus, which could not have survived the narrow prejudices of which he has sometimes been accused.

Why Sir Syed Ahmad opposed Muslim participation in Congress at that time

No more true is the charge that he was opposed to Muslim participation in politics for all time. Whatever arguments he may have used in the two political utterances to which I have referred, to convince his Muslim hearers, there were two arguments, and two only, that had obviously convinced Syed Ahmad Khan himself of the undesirability of Muslim participation in the Congress at the time. He realised to the full that nothing would suit the temper of the Mussalmans of his day better than the vocation of critics of their British supplanters in the governance of India; and he also realised that such a pursuit would be as dangerous to the continuance and progress of a peaceful political movement like the Congress as it was easy. This was the first argument that impelled Syed Ahmed Khan to keep his community under restraint in politics. The second argument was no less potent. Mussalmans must educate themselves if they desired the uplift of their community, and yet it was no easy task to reconcile Mussalmans to Western education even in an institution of their own; which unlike Government colleges

and schools, would not divorce religious from secular learning. The easy pursuit of a policy in which the Muslims could act as destructive critics of the hated infidel Government was sure to offer superior attractions to the dull and drab constructive programme of the educationist, and he therefore set himself to oppose all diversion of Muslim activities into the more attractive, but for the time being less useful, political channel. Reviewing the actions of a bygone generation today, I must confess I still think the attitude of Syed Ahmad Khan was eminently wise, and much as I wish that some things which he had said should have been left unsaid, I am constrained to admit that no well-wisher of Mussalmans, nor of India as a whole, could have followed a very different course in leading the Mussalmans.

Muslims not to become 'destructive critics' of Government

Justification of Sir Syed Ahmad's policy

Be it remembered that the man who enunciated this policy was not at the time a *persona grata* to the major portion of the community which he sought to lead. He was hated as a heretic because of the heterodoxy of his aggressive rationalism in interpreting the Holy Quran, and his militant opposition to popular superstitions believed in by the bulk of the orthodox and to shackling customs consecrated by time, though wholly unauthorised by Islam. He was abused and vilified by hundreds of thousands of his co-religionists, and for long the college that he had founded at Aligarh was the *bete noire* of the pious Muslim. And yet the entire community followed his political lead without a murmur. Neither fallacious arguments nor even political clap-trap could have possessed such potency, and it is my firm belief that his advocacy succeeded mainly because of the soundness of the policy advocated.

In spite of his rationalism in religion, Sir Syed Ahmad's 'political lead' was followed by the Muslims.

For two decades thereafter the Mussalmans had hardly any politics or any political institution worth the name. On important occassions when Syed Ahmad Khan, and, of course, his British supporters, thought that any demand of the Congress if satisfied would not be productive of good for the Mussalmans, he would call together a few of his friends, mostly Trus-

No political organisation of the Muslims

tees of the Aligarh College, who used to form a society bearing some such name as the "Muslim Defence Association," and a resolution of this body would be published in the *Pioneer* and in Syed Ahmad Khan's own local weekly newspaper in due course. That was all that the Mussalmans would do in those days in the field of politics.

Sir Syed Ahmad was not a sycophant.

I am far from denying that Syed Ahmad Khan knew perfectly well that his policy was more than acceptable to his official supporters, who would have in all likelihood put every possible obstruction in the way of his college and his Educational Conference if he had followed another less acceptable to them. But a very close study of his character leads me to declare that he was far from possessing the sycophancy with which some of his political critics have credited him. Indeed, even the opportunism of which his policy savoured could not have been entirely palatable to a nature so independent as his. . . .

Cautious movement of the Muslims

. . . I think I have conclusively proved that the Mussalmans did not rush into politics, that the Mussalmans did not rush into the Congress, that the Mussalmans did not rush into non-co-operation with the English and even to co-operation with their Hindu fellow-countrymen But every step that they took, they took deliberately, slowly, almost painfully and reluctantly. But the force of circumstances and the reality of the situation drove them to take that step and it is that reality which is to keep them where they are and not let them go out of the Congress into those alluring backwaters of old politics in which the Government kept us so long and wants us to keep us today . . . The Mussalmans had lost their rule of India. It had slipped out of their hands gradually and imperceptibly in the long course of a hundred years between the battle of Plassey and the Indian Mutiny of 1857, as it is generally styled. When they woke up at last to discover the true situation—they did not awake fully, they were still half asleep. They had lost their rule, but its traditions still remain with

them and instead of working for victory after defeat, they began to sulk in their tents. They were justified to possess that temper, a temper in which they would have ruined any peaceful movement as the Indian National Congress has always been. They would have been a most dangerous thorn in the body-politic of the nation, because they were in that temper and were not sufficiently educated in Western lore. At least in the pre-Gandhian days, I believe the Indian National Congress was a movement only of the educated classes, of those who had been educated along Western ways. Syed Ahmed Khan . . . foresaw in the thin tenor of the Mussalmans that to let them go into a body of critics of the Government would be to let them go into a place where they would revel in criticism and do nothing else; they would have even wrecked the Congress. I have also said here, you will notice, I have traced the close connection between the foundation of the Indian National Congress and the foundation of the first important national or rather communal Muslim political institution known as the Muslim League. It practically took 30 years, which corresponds to the growth of a new generation, it took 30 years from the foundation of the Universities of Calcutta, Madras, and Bombay to come into being. The first political educational centre was started at Aligarh. . . .

Temper of the Muslims was unfavourable to peaceful political movement.

Aligarh College

. . . It was no easy task that Syed Ahmad Khan had accomplished in founding an Anglo-Oriental College of his own community within two decades of the Indian Mutiny in the very regions which had formed the storm centre in 1857. In obedience, as it were, to a law of nature, once more nearly thirty years after the foundation of this College, there came into being a political institution of the Mussalmans who had not availed themselves of the educational facilities provided by the state Universities, and could not consequently share in the political awakening which those Universities had indirectly brought about. And it is not without significance that fairly prominent

Foundation of Muslim League

Muslim unity. For the first time a real franchise, however restricted, was being offered to Indians, and if Hindus and Mussalmans remained just as divided as they had hitherto been since the commencement of British rule, and often hostile to one another, mixed electorates would have provided the best battle-ground for inter-communal strifes, and would have still further widened the gulf separating the two communities. Each candidate for election would have appealed to his own community for votes, and would have based his claims for preference on the intensity of his ill-will towards the rival community, however disguised this may have been under some such formula as "the defence of his community's interests". Bad as this would have been, the results of an election in which the two communities were not equally matched would have been even worse, for the community that failed to get its representative elected would have inevitably borne a yet deeper grudge against its successful rival. Divided as the two communities were, there was no chance for any political principles coming into prominence during the elections. The creation of separate electorates did a great deal to put a stop to this inter-communal warfare, though I am far from oblivious of the fact that when inter-communal jealousies are acute, the men that are more likely to be returned even from communal electorates are just those who are noted for their ill-will towards the rival community.

Separate Electorate 'hastened the advent of Hindu-Muslim unity'.

Separate Electorate intensifies communal feelings.

12. DYARCHY AT WORK, 1921-1924.

[The Reforms Enquiry Committee was appointed in 1924 "(1) to enquire into the difficulties arising from, or defects inherent in, the working of the Government of India Act and the Rules thereunder in regard to the Central Government and the Governments of Governor's provinces; and (2) to investigate the feasibility and desirability of securing remedies for such difficulties or defects, consistent with the structure, policy and purpose of the Act, (*a*) by action taken under the Act and the Rules, or (*b*) by such amendments of the Act as appear necessary to rectify any administrative imperfections". Sir Alexander Muddiman was the Chairman of the Committee and the members were Mian Sir Muhammad Shafi, Maharajadhiraja Sir Bijay

Muddiman Committee.

Chand Mahtab, Sir Tej Bahadur Sapru, Sir Arthur Froom, Sir Sivaswami Iyer, Sir Henry Moncrieff Smith, Mr. M. A. Jinnah, Dr. R. P. Paranjpye. Sir Tej Bahadur Sapru, Sir Sivaswami Iyer, Mr. M. A. Jinnah and Dr. R. P. Paranjpye submitted a Minority Report]

I. Extracts from Majority Report, Reforms Enquiry Committee.

6. The present constitution came into operation at the beginning of 1921. It has thus not yet been in operation for four years. We are required now to report upon its working, but it may be argued that the period for which it has actually been in force is too short to afford sufficient experience for a well founded analysis. Several Local Governments have referred to this as a difficulty in the way of arriving at conclusions which they say is enhanced by the atmosphere in which the constitution has been worked, which resulted, *inter alia,* in the abstention from any participation in the reforms of a number of leaders of Indian opinion . . . The education of the electorate has been retarded by the non-co-operation movement . . . that movement . . diverted for three years the main stream of political activity from any endeavour to work the new Legislative Council. . . .

Effect of non-co-operation movement on working of reforms

8. The Madras Government report that the transitional constitution has worked with a considerable measure of success in Madras. Some progress has been made towards the understanding of the system of parliamentary government both by the representatives returned to the Council and by those who exercised the vote; political education has begun, and the population, both urban and rural, has become more articulate and to some extent more conscious of the meaning and value of the vote . . . The Governor in Council concludes that, if an earnest endeavour to work on constitutional lines is a qualification for political advance, the Madras Presidency has shown itself fitter for an advance than any other pro-

Success of reforms in Madras

vince. The Madras Ministers . . . insist that there should now be a complete transfer of all provincial subjects. The Governor in Council . . . is not prepared to agree that the time for it has yet come.

Demand for complete transfer of all provincial subjects

9. The Bombay Government say that there were no organized parties in the first Council, and that therefore there could be no organized support of the Ministers. In the present Council the Swarajist party is the only non-official party united by bonds other than communal. It is the strongest in numbers but does not command a majority, and it is pledged to a policy of refusal of political responsibility. The Ministers were therefore necessarily selected from the smaller groups, and this is the first and most important cause of the weakness of their present position. Having no adequate support from their followers they are obliged to rely largely for support upon the official vote, and accordingly the distinction between the two halves of the Government is obscured. . . .

Working of reforms in Bombay

Weakness of Ministers

10 The Bengal Government say that the obstacle which is the root of all the difficulty in working the transitional constitution is the Indian conception of the government as something in which the people have no share or responsibility, and which it is therefore the duty of every progressive politician to oppose. It is of the first necessity that the elected members should realise their powers and use them. As matters stand, there is no party with a real constructive programme. The Ministers are left to evolve a policy . . . and this the members proceed to criticise. These members have, however, no policy to put in its place, and, if the Ministers were replaced by others, the position would be just the same. The Council has thus failed to grasp its power to make the Government and by supporting it to carry through the schemes which it considers would be beneficial to the country. In the first Council progress was made and some solid achievements were recorded. The Ministers also were able to influence a sufficient number of the members to

Working of reforms in Bengal

First Council

make it possible, with the aid of officials, to carry through a considerable amount of useful legislation. The second Council contains a large and influential body belonging to the non-co-operation party which is pledged to prove that the present constitution is unworkable. This body was joined by the independents, and the combined party commands more than 60 votes in a House of a total strength of 140. . . .

Second Council

11. The Government of the United Provinces say that it is constantly alleged by their enemies and critics that the reforms have failed. They say that, if this means that the constitution has definitely broken down, the statement must be emphatically denied. . . .

Working of reforms in U. P

13. . . . Ministers and legislators have acquired some acquaintance with the practical difficulties of administration, but political development is still in the most elementary stage. The electors do not recognise that the legislature is their representative, and practically no attempt has been made by any party to educate them in their duties and responsibilities . . . In the legislature well-organised parties (except for the Swarajist) are non-existent; the interplay of personal factors is incessant; and the formation of stable combinations is impeded by the cross divisions of race, religion and interest. There is no large body of impartial opinion upon which the Minister can rely, and he can rarely take a strong line in opposition to any substantial or clamant section. In short, though this is certainly not surprising, neither the principle of responsibility to the electorate nor the principle of party cohesion has been established in any strength . . . The Governor in Council says that dyarchy is obviously a cumbrous, complex, confused system, having no logical basis, rooted in compromise and defensible only as a transitional expedient. . . .

Difficulties enumerated by U. P. Government

Dyarchy condemned

14. . . . A portion of the Hindu political element clearly welcomed the reforms as likely to afford them an opportunity of confirming a position

Working of reforms in the Punjab

gained by superior education and capacity in the use of political methods. It is doubtful whether the Muhammadans at large or the agricultural community were at that time aware of the opportunities which the reforms would give them for developing their own interests The authors of the scheme certainly could not have foreseen the speed with which its working would drive the two main communities into open dissension and would develop antagonism between urban and rural interests . . .

Communal dissensions

15. The immediate aim of the reforms was to arouse political consciousness by constituting and training an electorate and its representatives. There is not as yet evidence of the existence of a thinking and selective electorate in the Punjab, capable of exercising its vote on considerations of policy. The figures do not argue any undue apathy on the part of the electors: in the election of 1920 the percentage of electors voting was low owing to the prevalence of non-co-operation doctrines, but in the second general election 49 per cent. of the electors recorded their votes. There is, however, little evidence of that close touch between representatives and electors which constitutes the vitality of a representative system. The election address is practically unknown; the constituency judges of the personality rather than the programme of the candidate. The representative seldom, if ever, addresses his electors or canvasses their view on any project of legislation before the Council. . . .

No "thinking and selective" electorate

No close touch between representatives and electors

. . . The main criticism which is made against the departments administering the transferred subjects is that the Ministry of Education has subordinated the interests of its departments to the support of the communal interests of Muhammadans. It was not unreasonable that the Minister should attempt to secure definite opportunities to the community which constitutes his chief support in the Council. The further progress of the tendency must, however, be watched with some care in the interests of the reforms. . . .

Communal policy of Education Minister

"Ministers willing to co-operate with the executive"

16. . . . The dyarchical scheme necessarily contains anomalies, and it cannot be contended that the Punjab offered a really suitable field for the introduction of a divided responsibility. So far Ministers willing to co-operate with the executive have been found who have been supported by a party which has not attempted to force them into an extreme position. . . . In the Punjab, judging by the attitude of the press, which is subject to Hindu control, there is so little effective demand for further transfers as to create a suspicion that there would be some gratification if the transfer of certain subjects were revoked. At least constant efforts are made to persuade the Governor to control the Ministry in order to safeguard the communal interests of the minority in the Council.

No demand for transfer of new subjects

Working of reforms in Bihar and Orissa

18 . One may search in vain for signs that three years of the reforms have educated the electorate to the meaning of an election and the business of a legislature . . the Bihar and Orissa Government include among the causes which have contributed to the non-success of the reforms the failure to create a Ministerial party prepared to support the Ministers in carrying out a definite programme. The constitutional structure has been borrowed from England, but the foundation essential to carry it is lacking in India. . . . Another cause is the general political inexperience of the country and the reluctance of the average Indian members to face personal opposition or unpopularity. . . .

Causes of "non-success" of reforms

Working of reforms in C. P.

19 The Central Provinces Government say that the value of the experiment in responsible government during the first Council was weakened, firstly, by the lack of connection between the members and their constituents, secondly, by the absence of any party organization which would have made the responsibility of Ministers to the Council effective; and, thirdly, by lack of funds. The fair measure of success in the working of dyarchy which was achieved

was due partly to the moderation of the Council and partly to the efforts made to work the scheme by the Members of Government and the permanent services. "Fair measure of success" of Dyarchy

The basis of the reforms was the gradual training of the electorates by the exercise of responsibilities proportionate to their capacity for the time being The political education of the electorate must be a slow and difficult process, and in the Central Provinces the education given to it during the first Council was very small indeed. At the second general election Swaraj was put before the electorate as a vague millennium. . . For the local Legislature the franchise covers about 1 1 per cent of the total population, most of them illiterate A period of four years is far too short a time in which to expect the growth of political ideas in an electorate so handicapped by illiteracy and general lack of the political sense as that of the Central Provinces. . . . Franchise

20. . . . The Governor in Council sums up the difficulty of working the constitution as due, firstly, to the existence of a section of public men, considerable enough in numbers and ability to influence the Council, which is actively hostile to the present constitution and declines to work it, and secondly, to the financial difficulties which have precluded the Local Government from undertaking any activities other than carrying on the essential administrative functions on pre-existing lines. The Ministers have thus no convincing answer to the cry of their opponents that the reforms have bestowed no benefits on the electors. Working of reforms in Assam Two difficulties

24. . . . Generally speaking most of the Indian witnesses before us have attacked the present constitution as having been found after trial to be unworkable and have advocated the immediate grant of provincial autonomy to the provinces and the introduction of a measure of responsibility in the Central Government. So far as the Central Government is concerned, a common form which the recommendations of the witnesses took was for the transfer to Recommendations of Indian witnesses

the administration of Ministers responsible to the legislature of all subjects, except (*i*) Political and Foreign relations; and (*ii*) Defence. . . .

"Specific allegations" made by Indian witnesses against present constitution

25. The specific allegations against the present constitution and the manner in which it has been worked, which are contained in the evidence of the witnesses . . . may perhaps be summarized as follows:—

(*i*) the failure to encourage joint deliberation between the reserved and transferred sides of the Provincial Governments;

(*ii*) the absence of joint responsibility of the Ministers;

(*iii*) the impinging of the administration of reserved upon the administration of transferred subjects, and *vice versa*;

(*iv*) the failure on the part of permanent officials to co-operate with the Ministers;

(*v*) the vesting of the control of the Finance Department in a Member of the reserved side of the Government, the control thus given to the reserved side over the Ministers and, generally speaking, the handicapping of the other departments by excessive financial control[1]; and

(*vi*) the failure of the constitution to vest real authority in the Ministers owing to the control of—

(*a*) the Governor; and

(*b*) the Government of India and the Secretary of State.

39. We have now completed our examination of the evidence produced before us to the effect that dyarchy has failed. It is clear that witnesses have frequently made this allegation with reference not to dyarchy itself and have been thinking not of the

[1] See S. Sinha, *Some Eminent Bihar Contemporaries*, Appendix.

division of functions, which is the essential principle of dyarchy, but of other features of the constitution Complete dyarchy was not in fact established. For complete dyarchy it would have been necessary to have established a complete vertical division of functions between the two halves of a Provincial Government, and to have endowed each half with a separate purse, with a separate permanent staff and with a separate legislature; in the same way as in a federal constitution, there is a corresponding horizontal division in these respects . . . The partial dyarchy which was introduced is clearly . . . . . a complex, confused system . . . . The existing constitution is working in most provinces, and it is giving a training in Parliamentary Government to the electorate and also to the members of the legislatures and to Indian Ministers. While the period during which the present constitution has been in force has been too short to enable a well-founded opinion as to its success to be formed the evidence before us is far from convincing that it has failed. If, recently, in some of the provinces, it has not achieved the expected measure of success, it is because it was not worked on the lines and in the spirit which was intended. We hold in fact that, except by some form of dualism, it was not possible to afford an equally valuable training towards responsible government in India and still to safeguard those conditions upon which government depends.

Complete dyarchy not established

"Partial dyarchy" has not failed

II. Extracts from Minority Report, Reforms Enquiry Committee.

Chapter XII . . . . . In our opinion, the system of Dyarchy was during the first three years everywhere worked in the Legislatures by men most of whom were professedly its friends and who generally speaking tried to work it in that spirit of reasonableness which is referred to by the majority of our colleagues, and it is no exaggeration to say—indeed this is also the testimony of several Local Govern-

Dyarchy worked in a spirit of reasonableness during first three years

ments . . . . . —that generally a spirit of harmony and co-operation prevailed between the Legislature and the Executive, notwithstanding the fact that the atmosphere outside was for sometime markedly unfavourable. The Indian Ministers and Members of Executive Councils also, upon whom new opportunities of service were conferred, appear to us to have been, within the sphere of their executive duties, equally eager to work the constitution in the same spirit of reasonableness, and yet differing from the majority of our colleagues we have been forced to the conclusion that the present system has failed and in our opinion it is incapable of yielding better results in future. The system has been severely tested during the course of this year and its practical breakdown in two provinces, *viz*, Bengal and the Central Provinces as a result of the opinions of the majority of the members of the Councils of those two provinces who refuse to believe in the efficacy of Dyarchy, and the tension prevailing in the other Legislatures for similar reasons, point to the conclusion that the constitution requires being overhauled. It has failed in our opinion for several reasons: (1) There are the inherent defects of the constitution which though theoretically obvious at its inception have now been clearly shown by actual experience to exist. (2) The Minister's position has not been one of real responsibility. (3) While in a few provinces[1] the practice of effective joint deliberation between the two halves of the Government has been followed, in several of them it has not been. (4) Excepting to a partial extent in Madras, almost everywhere else the Ministers have been dealt with individually by Governors and not on the footing of collective responsibility. (5) The close interconnection between the subjects of administration which have been divided into 'reserved' and 'transferred' has made it extremely difficult for Legislatures at times to make in practice a distinction between the two sections of the Government with the result that the policy and

Dyarchy has failed.

Breakdown in Bengal and C. P.

Causes of failure of constitution

[1]Only in Madras and Bengal. See *Report*, pp. 157-159.

administration of the Reserved half of the Government have not infrequently been patent factors in determining the attitude of the Legislatures towards the Ministers and have also in our opinion prejudiced the growth and strength of parties in the Councils. (6) The Meston Award has crippled the resources of the provinces. It has been the corner stone of the entire financial system, and it has prevented Ministers from developing nation-building Departments to the extent which would have enabled them to produce any substantial results. (7) The defects of the Rules . . and the constitution and the working of the Finance Departments have put a severe strain on the system.

The criticism which the Montagu-Chelmsford Report made of the Congress-League Scheme[1] has been demonstrated to be true in actual experience of the defect of having an irremovable Executive with an elected majority in the Legislature as is the case in the Legislative Assembly under the present constitution . . . .

Central Government

We think that the Bihar Government has correctly summed up the position in the provinces by saying that Dyarchy is working 'creakily' and 'minor remedies may cure a creak or two' . . . .

Dyarchy working 'creakily'

13. WORK OF CENTRAL LEGISLATURE UNDER ACT OF 1919[2].

The legislative activities of the reformed Indian Legislature are illustrative not only of its attitude towards the practical requirements of the country and towards the proposals of the executive, but also of the problems which the new conditions have presented for solution and of the directions in which private members have considered amendment of the law to be necessary. Since 1921, when the Indian

Authority of reformed legislature on legislation

[1] See *Indian Constitutional Documents,* Vol II.

[2] Extracts from a Memorandum submitted by the Government of India to the Simon Commission.

Legislature came into being, 199 Government measures have received its approval. Only five Government Bills were either rejected or withdrawn as a result of the hostile attitude of the Legislative Assembly and on only four occasions did the Governor-General have recourse to certification in order to secure necessary legislation. The five Bills with which Government was unable to proceed were not measures of great importance.

Government measures: rejection, withdrawal, certification

* * * *

The Bills certified by the Governor-General were the Finance Acts of 1923 and 1924, the Indian States (Protection against Disaffection) Act, 1922, and the Bengal Criminal Law Amendment (Supplementary) Act, 1925

. On all the occasions on which the power of certification has been used the Council of State has associated itself with the Governor-General by passing the Bill in question in the form recommended by him

'Discriminating support' of legislature to Government measures

The conclusion is that the legislature has lent a discriminating support to the measures which Government in the ordinary course of administration found it necessary to propose, and has given a new prominence, whether because of its own prepossessions or because of India's awakening interest in fresh activities, to particular classes of legislation.

Private Members' legislation

In a legislature of which lawyers are so numerous and so influential an element non-official attempts at legislation are to be expected. The desire to be the author of a measure placed on the statute book is strong in many members' breasts. Individual members and not political parties have been responsible for most of the proposals now to be described. In all, 95 Bills have been introduced by private members, and their origin in forensic practice is indicated by the subjects with which they dealt. As many as 49 related to matters of civil law and 19 to matters connected with law and order. Only 7 dealt with social

matters, which are an appropriate sphere of private member's legislation. In general, highly technical matters, except legal matters, were avoided by members, for they have no facilities for drawing up Bills of that nature and the proposals made were usually of limited scope.

Time allotted to private Members' Bills

The facilities afforded for legislation of this kind were not ungenerous. In the Assembly out of 405 sittings 308 were appropriated to Government business and 97 to non-official business. For non-official Bills 35 days were allotted. In the Council of State, where non-official resolutions and non-official Bills alike may be discussed on a non-official day, 157 days were appropriated to Government business and 101 to non-official business. These facilities were obviously adequate in a legislature which is lukewarm towards private members' Bills. . . .

* * * *

Sixty-two Bills which private members proposed to introduce required the previous sanction[1] of the Governor-General. Sanction was accorded in 36 cases and withheld in 26 cases. The most frequent ground on which sanction was refused was that the proposed Bills sought to regulate provincial subjects . . . . .

* * * *

Power to disallow Acts not used by Governor-General or Crown

The assent of the Governor-General has never been withheld from a Bill passed by both Chambers of the Indian Legislature, nor has any such Bill been returned for reconsideration. No use has been made of the powers to refer a matter for decision to a joint sitting of both chambers. The power of the Crown to disallow Acts of the Indian Legislature has not been exercised.

Authority of Legislature on finance

In effect the statutory restrictions on the financial authority of the Assembly in the matter of supply have proved to be inelastic; on the other hand, its

[1] Section 67(2) of the Government of India Act.

sphere of influence has steadily grown. The proportions of voted and non-voted expenditure are roughly equal.

Conclusions regarding Finance Bills

The history of these Financial Bills[1] suggests several important general conclusions. First, they present a very potent instrument for controlling not only voted but non-voted expenditure. The Assembly has been able, in particular, to use this weapon to reduce Army expenditure. Secondly, agreement with the Executive Government has been secured when extraneous political questions were not at issue, and specially when the Assembly was single-minded in the pursuit of economy. Lastly, the Assembly has no power of initiative. It may refuse its assent to a demand or reduce it, but may not increase it or alter its destination. Similarly, rulings of the Presidents have established that it may not, even by way of amendment to the Finance Bill, impose taxation which the Governor-General in Council has not proposed. It is, however, open to question whether all such amendments do not come within the scope of Section 67(2) (*a*) of the Government of India Act, and if a new tax by way of substitution of a tax proposed in the Finance Bill or an increase of a tax so proposed were to be moved, the ruling of the President would be sought with reference to that provision of the Act if sanction had not already been obtained to the moving of the amendment. In these respects the constitution has modelled itself on the lines of the House of Commons, but in one respect the Assembly is more zealous of its powers than that chamber is. It has never adopted the self-denying ordinance that the expenditure proposals of the Government should not be modified except in so far as such modifications are formally accepted by them.

[1] The reference is to the Finance Bills of 1921, 1922, 1923, 1924, 1925, 1927. The Bill of 1928 was passed as it was introduced.

So far this note has been concerned with matters on which the conclusions of the Chambers prevail unless authority placed by the constitution in other hands is brought into operation. It has been indicated that particular portions of the administration are in varying degrees removed from the legislative or financial authority of the Chambers. For instance the public debt of India may not, except with the previous sanction of the Governor-General, be made the subject of any measure in either Chamber, and its service is not subject to the vote of the Assembly. The Indian Legislature may not legislate for the public services, nor may supply for portions of these services be presented to the vote. The maintenance of the defence forces and the administration of foreign and political affairs are outside the scope of private member's legislation save with previous sanction which would not ordinarily be given and supply for them is appropriated by the Governor-General in Council. Expenditure classified as ecclesiastical is also non-votable.

"Portions of the administration are in varying degrees removed from the legislative or financial authority of the" Legislature.

But, besides the sphere of authority, there is a sphere of influence within which, chiefly by interpellation, resolution or motion or through Committees, the Chambers may bring effective pressure to bear on Government. To this influence the whole administration, with two abatements, is subject. The general abatement is that the Governor-General may disallow any resolution or motion for the adjournment on the ground that it cannot be moved without detriment to the public interest, or that it relates to a matter which is not primarily the concern of the Governor-General in Council. The particular exception is that the relation of the Governor-General or the Governor-General in Council with any foreign State or with an Indian State and the affairs and administration of an Indian Prince or Chief may not be made the subject of a question, a resolution or a motion to adjourn the House. It is important for present purposes to observe that the public debt, the

How Legislature may bring effective pressure to bear on Government

Subjects excluded from sphere of Legislature

Civil Services in India and defence, which have been removed from the legislative and financial control of the Legislative Chambers, have not been removed from any portion of their statutory influence exercised by the asking of questions and the moving of resolutions and the moving of a motion for the adjournment.

Interpellation

The right of subjecting the representatives of Government to oral examination is one which is highly valued and freely used. In the Council of State during the last seven years notice of 3,173 questions has been given and 2,561 have actually been asked. The volume of questions has not varied appreciably in that period. But in the Legislative Assembly, the use of interpellation at once increased when the Swaraj Party entered the Chamber. The first Assembly asked steadily about thirteen to fourteen hundred questions each year; the second and third assemblies asked each year about twice that number. During seven years notice of 18,107 questions has been given and 14,842 have been put. . . . . .

Policy of Government regarding Interpellation:

(1) Questions regarding Indian States

(2) Questions regarding powers vested in Governor-General

Objections on points of substance are taken much less freely by Government. On two matters, however, Government have been more strict. Objection has been taken as a matter of principle to questions affecting the relations of Indian States with the Governor-General in Council or the territories of the former. The rules impose an absolute prohibition on such questions and there is therefore a duty on Government to raise objections. The President is also advised to disallow questions regarding the exercise of powers vested in the Governor-General alone. Objections regarding the substance of a question are most frequently due to its subject-matter being related to public affairs with which the Member of Government addressed is not officially connected or to a matter of administration for which he is not responsible. Members frequently desire to examine the Central Government on matters of purely provincial

concern. The earlier practice of Government was to take objection to all questions relating to provincial subjects. But in 1924 the Assembly passed a resolution to the effect that all important questions or subjects over which the Governor-General in Council has superintendence, direction and control be answered by Government after obtaining the necessary information from the Provincial Governments. Government adhere to the principle that questions relating to provincial subjects should not be answered, but they have made this concession to the demand of the Assembly that disallowance of questions relating to provincial subjects (both reserved and transferred) is not recommended when the Government of India have knowledge of the details and they refer to matters of all-India interest.

(3) Questions regarding Provincial subjects

. . . . Interpellation has had a considerable success in affecting the action of Government. It influenced considerably the shape of reforms in cantonment administration, brought to light defects in electoral rules or practice led to the promulgation of vigorous rules under the Mines Act for the safety of human life and induced Government to send a deputation of non-official members of the Assembly to visit the Andaman Islands[1]. Questions urged with success the claims of Indian lads to be trained in the Royal Air Force, the grievances of pilgrims to Mecca, and the necessity for a special scrutiny of the Transfer of Property Act. It was as a result of questions in the Assembly that the position of the Indian States with reference to conventions concluded on behalf of India was exhaustively examined. Finally, interpellations in the Assembly led to the attention of the local administrations being directed to religious and moral instruction in Government Schools, forced labour, the import and sale of arti-

Effect of Interpellation on Government action

[1] This deputation visited the Andamans in December, 1925, to see the conditions of the Mappilla convicts settled there.

ficial ghee, the adulteration of tea, the prescription of an objectionable book and such more particular matters as the revision of the regulations and the re-arrangement of political work in Ajmer-Marwara and the Radium Institute at Ranchi.

Non-official resolutions

Non-official resolutions are naturally much more numerous. They occupied the Council of State on 101 days and the Legislative Assembly on 62 days. Repetition of resolution makes it difficult to compute accurately the total number of which notice was given, but the numbers appear to exceed 500 for the Council of State and 5,000 for the Legislative Assembly. . . . . .

Non-official resolutions disallowed by Governor-General

A resolution may be disallowed by the President on grounds of substance or of form, as in the case of questions. But the Governor-General has also a power of disallowance when a proposed resolution cannot be moved without detriment to the public interest or when it relates to a matter which is not primarily the concern of the Governor-General in Council. This power has been used on 31 occasions in the Council of State and 210 occasions in the Legislative Assembly. All but one of the resolutions disallowed in the Council of State were defective as relating to matters not primarily the concern of the Governor-General in Council. In the Legislative Assembly this defect was fatal to 160 resolutions and 50 were disallowed in the public interest. It has not been the practice of His Excellency to exercise strictly his discretionary power of disallowance on the ground of irrelevance to the central administration. It is recognised that even though the subject may be one with the administration of which a province is charged within its own area, yet the Government of India have a wider responsibility and debate upon the general conditions of India should not be excluded in the central legislature. . . .

The Presidents of the Chambers have disallowed 14 resolutions in the Council of State and 77 in the Legislative Assembly. The only numerous class of resolutions disallowed by a President is the 42 resolutions of which notice was given in the Legislative Assembly which related to foreign and Indian States. Government have almost invariably taken objection to resolutions relating to Indian States. On several occasions discussions on the relations of India with other Dominions and the Colonies have taken place even though such discussions tend to be detrimental to broader Imperial interests. These are matters on which public opinion is very strong. The remaining grounds on which Presidents passed orders of disallowance were matters of form, the defects usually being such as could not be cured after reference to the proposer.

Non-official resolutions disallowed by Presidents of Chambers

The subjects with which resolutions were concerned are so multifarious that comprehensive view can best be attained by considering the departments whose administration was brought under discussion, and by paying particular attention to the discussion of matters not under the full control of the legislature. The Department which has to meet the most numerous resolutions is the Home Department. . . . The resolutions affecting the Army Department began in 1921 with 15 resolutions arising out of the Esher Committee's report. . . .Resolutions regarding financial administration were not so numerous. . . . .The Legislative Department were pressed to secure for India an adequate share of the indemnities and reparations to be obtained from Germany. . . . .The most important resolutions on matters under the control of the Department of Education, Health and Lands related to the status of Indians overseas. . . . The Department of Industries and Labour were encouraged to proceed with Trade Unions legislation. . . . Non-official resolutions on commercial matters have not been numerous. . . . .

Departments affected by non-official resolutions

Government defeats on non-official resolutions

Government have only once been defeated on a resolution in the Council of State. The Legislative Assembly, however, has been less amenable to the arguments of Government speakers. It has divided on 91 occasions on resolutions, and has reached a decision favourable to Government on 51 occasions and unfavourable on 40 occasions.

Effect of non-official resolutions on Government action

. . . . Government have given full effect to 37 and part effect to 36 non-official resolutions passed in the Assembly. The corresponding figures for the Council of State are 32 and 24.

In 32 cases, however, in the Assembly and 19 cases in the Council of State Government have found themselves unable to give effect to resolutions. . . .

14. RELATIONS BETWEEN CENTRAL AND PROVINCIAL GOVERNMENTS UNDER ACT OF 1919[1].

Government of India Act, Section 33

. . . . The most important of these relations (between the Government of India and the Provincial Governments) are those arising from the general superintendence, direction and control of the civil and military government of India vested by statute in the Governor-General in Council. But in actual administration the occasions of contact between the central and provincial Governments were due in a great majority of cases to other causes.

Devolution Act

In the first place, there is a large number of enactments where powers are reserved to the Governor-General in Council, or are exercised by local Governments or authorities, subject to his sanction or control. In 1920, as a preliminary to the introduction of the reforms, the whole statute book was examined and a Devolution Act was passed in order to remove as many as possible of the prescriptions

[1] Extracts from a Memorandum submitted by the Government of India to the Simon Commission.

requiring the sanction of the Governor-General in Council, or maintaining his control. Local Governments, so far as is consistent with the due exercise by the Government of India of the powers necessary for the maintenance and discharge of their own responsibilities, were set free from the supervision and control of the Government of India. But there are still 91 Acts of the Governor-General in Council, 36 regulations made by the Governor-General, and in each province a varying number of local enactments which require the proposals of the local Government on certain matters to be submitted to the Government of India for sanction. It is sufficient to note that although references by local Governments under these enactments to the Government of India have been constant, yet there has been no representation that the Devolution Act was an inadequate or ungenerous measure, and no arguments for its amplification were addressed to the Reforms Enquiry Committee of 1924.

Cases where proposals of Local Governments require sanction of Government of India

In the second place, the Government of India Act, and rules or orders under it, require local Governments to obtain in certain circumstances the sanction of the higher authorities. The particular instance of previous sanction to the introduction of proposed provincial legislation is a matter of the exercise of the powers of the Governor-General and not of the Government of India. . . . .Otherwise the relations of the Government of India with provincial Governments arising out of specific provisions of the Act and rules have been concerned preponderatingly with service and financial questions. In these matters and particularly in regard to expenditure sanctions, the orders required were usually those of the Secretary of State. The Government of India has exercised mostly functions of consultation and criticism. In service matters the need for such references has recently been greatly reduced by the promulgation of rules delegating to local Governments complete authority over provincial and subordinate services and special

Previous sanction of Governor-General to provincial legislation

Control of Government of India over Services and finance

officers. In financial matters, the Meston settlement has been a constant source of dissatisfaction to certain provinces, and no satisfactory means has yet been devised of securing adequate control by the Government of India, combined with a due freedom in provincial Governments, over capital expenditure on large public works. The alienation of lands other than land for industrial purposes and land revenue by provincial Governments is restrained by executive orders of the Government of India and has given occasion for discussion with various provinces.

Conflicts of jurisdiction between Centre and Provinces

In the third place, not infrequent discussions between the Central and local Governments have been concerned with conflicts of jurisdiction or interpretation of particular provisions in the constitution. It has been necessary for the Secretary of State to prescribe rules to regulate the transfer of State lands and buildings between the Government of India and local Governments. Excise administration by Ministers in provinces has at times seemed to conflict with the central administration of tariffs and customs. The levy of terminal taxes by local Governments, more freely and extensively than could have been aprehended, has seemed at times to threaten the best interests of the commerce of the country as a whole, and indeed, where differentiation between Indian and foreign goods has been attempted, to indicate a weakness in the position of the Government of India in regard to commercial treaties. So much so, that the Taxation Enquiry Committee has recommended the formulation of general principles and the statutory conferment on the Government of India of powers to control the imposition of such taxes.

Attempts of Provincial Governments to relieve their finance at the cost of Government of India

Analogous to these cases are the numerous cases in which it was sought to interpret the classification of subjects as provincial or central so as to relieve provincial finance and cast the burden on to central revenues. In the beginning of the Reforms era some of the Provincial Governments busied themselves in trying to discover instances of services rendered to

the Central Government and making claims for remuneration for them. Others were driven by financial stringency into strained interpretations of the proper classification of charges as central or provincial, even though the amounts at stake were small, or to take action which would affect central finances unfavourably. Claims have been made for reductions of the provincial contributions, for a greater share in income-tax and for the export duty on jute Controversies of this nature were bound to arise in any constitution which proceeded from a delimitation of fields of administration, and therefore offered a scope for difference of interpretation in detailed practice. But claims of this kind have happily become less frequent, not only through exhaustion of major matters of dispute, but chiefly because of friendly agreement on broad principles in annual conferences of Finance Members.

Government of India as "friendly co-ordinator of provincial activities"

Finally, the Government of India has acted as the friendly co-ordinator of provincial activities. Conferences on matters such as Education, Jail Administration and Police work have enabled provincial administrations to conduct their own affairs with acquaintance of the experiences and interests of their fellows.

Control of Government of India on Provincial Transferred Subjects

The general powers of superintendence, direction and control by the Government of India over Provincial administration vary widely according as the subjects are reserved or transferred. In the latter case, the statutory restrictions on the exercise of these powers have the practical effect of permitting only their occasional use, and it has been in service matters, where the administration of a central subject is concerned, that interference has been practised. When the Punjab Government proposed to prohibit the import into that province of foreign liquor the Government of India did not feel justified on a strict interpretation of the provisions of Rule 49 of the Devolution Rules in cancelling the order in the exercise of their powers for the purpose of safeguarding the administration of the central subject of Customs. Again no interference appeared to be justi-

fied when allegations were made of very serious deterioration of certain main roads. In short, central control of transferred provincial administration has been exceedingly rare.

Control of Government of India on Provincial Reserved Subjects

Over the administration of reserved subjects the intention of the constitution is that control should be normal and constant, but in the absence of definition of its scope it has fallen to the Government of India to arrive itself at a settled practice. The general principle observed has been to grant to the provinces as free a hand as possible in the various spheres of provincial administration and the accepted policy of the Government of India in the matter is to confine their attention as far as practicable to the consideration of such aspects only of provincial subjects as affect general policy or general interests. The pursuit of this policy has naturally had different results in different spheres of administration. For instance, the provincial administration of land revenue has been controlled by the Government of India mainly with a view to regulation of alienation of land and land revenue and to restrictions on deviations from accepted principles of assessment, whether these deviations manifest themselves in fixing unusual percentages of net assets as the amount to be taken as land revenue, in prescribing unduly long periods of settlement or in giving Legislative Councils a voice in determining rates of assessment. On the other hand, superintendence of matters with the administration of which the Government of India in the Home Department is concerned has gone into detail of a wider range. The attention of local Governments has, for instance, been directed to the possible effects of reductions in the Police force, the state of crime generally, delays in the disposal of criminal cases, the conditions of jail accommodation and jail discipline and administration, and the use of whipping as a jail punishment. Instructions have been issued to provincial Governments regarding the treatment of certain classes of prisoners in jails and in the matter of the censorship of cinemas and model regulations

Land revenue

Police, Jails, etc.

for the provincial councils under the electoral rules have been circulated. From time to time the Government of India have directed the prosecution of certain persons for political offences. The consideration in these cases has been whether the prosecutions were of all-India importance or of importance to more provinces than one. Local Governments, however, remain competent to prosecute individuals on their own initiative whenever they consider it desirable

That the Government of India have not exercised their powers of superintendence so as to restrict unduly the freedom of provincial Governments will be apparent from the means by which they inform themselves of matters under their control. In pre-reform days the Government of India exercised control over the Provincial Governments through the agency of the touring headquarters experts. The time when that was possible has gone by. The Inspector-General of Forests still makes inspections but his role is primarily to advise provincial Governments and the Government of India on the management of State forest property. The post of the Inspector-General of Irrigation has been abolished and the Government of India have appointed a Consulting Engineer of the standing of a Junior Chief Engineer who advises them on technical matters. A Central Board of Irrigation has also been constituted, consisting of the Provincial Chief Engineers for Irrigation and the Consulting Engineer to the Government of India, to advise local Governments as well as the Central Government on difficult technical matters which may be referred to it, such for example as important irrigation projects under preparation, or a dispute between two local Governments or between a local Government and an Indian State. The Government of India, therefore, move in the direction of superintendence, direction and control on receipt of the periodical reports of the administration or of special reports the submission of which is governed by orders of 1899. Only in regard to legislation have the Government of India taken steps to enable themselves

Machinery used by Government of India to collect information on Provincial matters

to control the new powers of the provincial Governments. The decision whether a Bill is of substantial importance within the meaning of the instructions is left to the local Government and in the vast majority of cases in which Bills are submitted the Government of India do not in fact interfere at all. The requirement is imposed only with a view to the Government of India making observations or, in the last resort, issuing orders, if so advised.

Government of India and Provincial legislation

The inclination of administrative departments of the Government of India generally is to be chary of exercising over provincial administration the powers which they undoubtedly possess. Where interference is found necessary, criticisms are generally tendered in the form of advice and the issue of direct orders is avoided. The fact appears to be that no detailed definitions of the appropriate exercise of these powers have been reached in the several departments of the Central Government. The essential subject of law and order is more closely controlled than others, but otherwise the tendency is to err, if at all, in the direction of provincial freedom. In one important particular, however, the intention of the constitution has been clearly expounded. It has been established that, unless the Act and Rules specifically declare a contrary intention, the powers exercised by a provincial Governor, as distinct from the Governor in Council, are subject to the superintendence, direction and control of the Governor-General in Council.

General policy of Government of India is non-interference.

Law and order

Powers of Governor

As regards the relations of local Governments as agents of the Central Government for the administration of central subjects, it is necessary to mention only two points of some constitutional importance and one curious anomaly in administrative arrangements. Certain Indian States have not been taken under the control of the Governor-General in Council. The practice has been to appoint Governors of provinces in their personal capacity as Agents to the Governor-General for the administration of relations with these States. It is now established that such an appointment is constitutionally inappropriate and

'Agency' functions of Local Governments

Indian States

that in future the agency of the Governor in Council should be used for the purpose in question. Similarly, cases have arisen in which it was desired to use the agency of the Minister in charge of a transferred department. The rules, however, provide only for the employment of the agency of the Governor in Council and in these cases the relations of the Minister and the Government of India are not those of agent and principal, but of parties to a business arrangement Thus the Central Government, which has no public works establishment of its own for carrying out works in provinces, depends almost entirely on assistance from transferred departments of local Governments The local Government cannot be required to afford this assistance, and if it does so, it is not subject to the superintendence, direction and control of the Government of India and it may fix its own charges. Indeed, local Governments have on occasions declined to undertake agency work of certain kinds.

Public Works

In other respects, agency relations have occasioned no difficulties. But there remains the anomalous position in regard to the administration of shipping and navigation, major ports and lighthouses. These are central subjects, but powers concerning them are almost entirely vested in the local Governments by provincial or Indian statutes. The result has been a lack of uniformity in administration from province to province in the framing of rules, the issue of certificates and the rates of fees—matters which have an international bearing. This anomalous position appears to have been due to a failure to pass an Act, the converse to the Devolution Act, by which the powers vested in the local Governments might have been restored to the Government of India. Methods of putting the whole administration of these subjects on a proper footing have been considered, and a beginning has been made with lighthouse administration for which legislation has just been enacted by the Indian Legislature.

Shipping, ports, etc.

15. RELATIONS OF GOVERNMENT OF INDIA WITH SECRETARY OF STATE UNDER ACT OF 1919[1].

The relations of the Government of India with the Secretary of State in Council group themselves most conveniently round the particular powers which the Government of India Act has reserved to the Secretary of State, his control of the expenditure of the revenues of India in British India, and his general powers of superintendence, direction and control.

Control of Secretary of State over Services

In the first category fall a large number of powers of which many, such as the power to sanction the appointment of a Deputy Governor, have never been used. But it also includes the powers to make rules for regulating the classification of the civil services in India, the methods of their recruitment, their conditions of service, pay and allowances and discipline and conduct. These powers are now in process of partial delegation to authorities in India. Meanwhile their exercise has necessitated a constant stream of correspondence between India and England and occasioned not infrequent difference of opinion. The Secretary of State in Council has always emphasised his guardianship of the official services, and he has accordingly exercised over the Government of India a control varying from general questions of service conditions to orders in regard to the particular circumstances of individual officers which by rule involve reference to him. His powers in this regard have been more particularly defined in various sets of rules, such as the Fundamental Rules. But, whatever the volume of this business, it is not of prime importance for the present account, for it was, under other conditions, a feature of pre-reforms administration, and, seeing that the Indian Legislature has no power over conditions of service, it does not arise from the cardinal change in the Government of India, namely, the independence and authority of the Legislative Chambers.

[1] Extracts from a Memorandum submitted by the Government of India to the Simon Commission.

It is otherwise in the case of financial control. The Act of 1919 in the manner of earlier Acts made the control of the Secretary of State over expenditure in British India "subject to the provisions of the Act and rules made thereunder" and one of these provisions introduced a new controlling authority over expenditure, by laying down, albeit with two well-known qualifications, that the proposals of the Governor-General for the appropriation of funds shall be submitted to vote of the Legislative Assembly. This change and the practical difficulty in scrutinising the great mass of the expenditure of the Government of India rendered it necessary to delegate large powers of initiative to the Government of India. The rules regarding expenditure sanctions have, therefore, been relaxed so as to require the previous sanction of the Secretary of State in Council in only a limited class of cases. There is, however, the general understanding that plans involving important questions of policy should not be initiated without consultation with him. Nevertheless, the theoretical position is clear. The Secretary of State remains in law responsible to Parliament for all expenditure from Indian public funds. Accordingly, control from home over administration in the Finance Department of the Government of India is closer than that over almost any other class of administration, except perhaps defence, foreign relations and the conditions of service under the Crown. The budget proposals of the Government of India and particularly those affecting taxation must be referred to the Secretary of State in the first instance and approved by him before the budget is presented to the legislature. He also controls ways and means operations, sales of Council Bills, the management of the Gold Standard and Paper Currency reserves, the policy with regard to exchange and currency, and all borrowing operations in London.

Control of Secretary of State over finance

Growing initiative of Government of India

Control of Secretary of State over Budget, Currency, Public Debt, etc.

The control of the Secretary of State on matters of Railway administration is in the main financial, but it is illustrative of three categories suggested at the beginning of this paragraph, for the particular

Control of Secretary of State over Railways

statutory powers of the Secretary of State include powers to restrict the making of contracts, and all questions of general railway policy are controlled by the Secretary of State under his general powers of superintendence. The accepted policy of managing Railways on commercial lines and the growing interest and influence of the legislative chambers in Railway matters impose practical restrictions on the interference of the Secretary of State. In practice he is concerned only with the very broadest questions of administration, organisation and finance. Thus when the construction of a new line is proposed, the Secretary of State's approval is required if the estimated cost chargeable either to capital or to revenue exceeds 1½ crores of rupees, or if an objection is raised by an authority working a Railway to which the new line will be connected or of which the interests will be affected by the new line. Without the sanction of the Secretary of State the Government of India may not start open line works when the estimated capital cost of the new work or the group of works forming one project exceeds 1½ crores of rupees All proposals for the purchase of any portion of a Railway belonging to a Company of English domicile or the sale of any portion of a State Railway require the sanction of the Secretary of State. When the purchase price of any branch line belonging to a Company of Indian domicile exceeds 1½ crores of rupees or the amount payable under the contract with the Company, whichever is less, the sanction of the Secretary of State is required. When disputes arise out of the terms of contract executed in England with Companies of English domicile, the Secretary of State's sanction is necessary to their reference to arbitration. If any suggested abandonment of Railway revenues raises an important question of policy, the Secretary of State requires reference to himself before action is taken.

Some illustrative cases where Government of India cannot act without previous sanction of Secretary of State

In the matters described in the preceding paragraph it is not always clear whether the control exercised by the Secretary of State is based on particular

or general powers, nor is it in practice necessary that the source of his authority should be indicated. But there are many matters in which the action of the Secretary of State is clearly an exercise of general superintendence, direction and control. His powers of this nature are still unrestricted by either rule or convention, for no action has been taken on the suggestion by the Joint Select Committee of a convention that the Secretary of State should not ordinarily dissent from concurrent conclusions of the Government of India and the Legislative Assembly on matters of purely Indian interest, or on a similar suggestion by the Reforms Enquiry Committee. The Secretary of State in Council retains very considerable powers In particular he is absolutely responsible to the Parliament for the maintenance of peace or order in India, and Imperial control over India's foreign and military affairs is unrelaxed. In certain cases the Secretary of State has by executive order insisted on being placed in a position to exercise control, if so advised. Thus his concurrence must be obtained before the Governor-General refuses statutory previous sanction to the whole or a substantial part of a provincial Bill which a local Government desires to introduce and before the Governor-General in Council requires a local Government by executive order to refrain from proceeding with a provincial Bill which does not require statutory sanction. Again, the Secretary of State is content that only certain classes of official Bills should be reported for his approval before introduction, although the pre-reforms practice was to obtain his previous approval in principle to all projects for legislation. The more important of these classes include Bills which include Imperial or Military affairs or foreign relations, affect the rights of European British subjects or the law of naturalisation, concern the public debt or customs, currency and shipping, or interfere with provincial legislation. But generally the sphere within which the Secretary of State may wish to exercise his powers of superintendence, direction and control is a matter of understanding rather than

Secretary of State's general superintendence, direction and control

Secretary of State "retains very considerable powers".

Initiative of Secretary of State

precise definition. Broad general questions are invariably referred to him, and new departures of any importance in purely administrative matters are brought to his notice. At the same time the Secretary of State is not restricted in the initiation of his control. He has, for instance, *sou motu*, drawn attention to overcrowding in Indian jails, and to official criticisms of observations made in a Legislative Council by a non-official member. But except in certain financial questions the initiative of the Secretary of State has never been pushed to the extent of reducing the Government of India to the position of a mere subordinate agency, and it is probably true to say that in matters of finance there has been on the whole a tendency as time goes on for his control to be gradually relaxed.

Control of Secretary of State over Army matters

In Army matters the position is somewhat different. His Majesty's Government maintain a larger army than they would maintain but for the necessity of defending India, and they are under a constant liability to reinforce India with troops in the event of an emergency. The question of the strength of the Army in India is thus an Imperial question not because it is proposed to use the Army in India for the general defence of the Empire but because it may be necessary at any moment to use the Imperial Army for the defence of India. In these matters the superintendence, direction and control of the Secretary of State has, therefore, been more close, action has been taken more freely on the initiation of the Secretary of State and the recommendations of the Government of India have been more independently considered and on occasions overruled.

Control of Secretary of State over Governor-General

Finally, it has been established that the control of the Secretary of State extends to the exercise by the Governor-General of powers vested in him, apart from his Council, unless the Act clearly indicates a contrary intention.

16. THE GOVERNMENT OF INDIA ON COMMUNAL ELECTORATES UNDER ACT OF 1919[1].

The problem of communal electorates was expressly mentioned in the terms of reference to the Franchise Committee who were required *inter alia* to advise:—

Terms of reference of Franchise Committee

> how far representation can be adequately and effectively secured by territorial electorates, or where circumstances seem to require it in order to secure adequate representation of minorities, of special interests or of backward classes by (*i*) special or communal electorates; or (*ii*) reserving elective seats for special classes in plural constituencies, or (*iii*) nomination in such measure as the exigencies of fair and adequate representation entail; or (*iv*) other expedients, for instance proportional representation, etc.

It is no part of this note to examine the extent to which the Franchise Committee succeeded in proposing an electorate, based not upon interests, but measuring "the number of persons who can be reasonably entrusted with the duties of citizenship", but the Committee in paragraph 10 of its report came to an early decision that there should be "the same qualification for all communities within the same area, although this will enfranchise a smaller proportion of Muslims than of non-Muslims". Muslim representation then was to be secured not by separate electorates, with different franchise qualifications, but by a separate register prepared from the same general body of electors for separate Muslim constituencies; for in considering the problem of communal representation the Committee decided (paragraph 15) not merely that Muslims must have separate representation in all provinces (Burma was not under discussion), but (paragraph 16) that there should also be separate communal representation for Sikhs in the Punjab (as recommended by the Joint Authors),

Recommendations of Franchise Committee

[1] Extracts from a Memorandum submitted by the Government of India to the Simon Commission.

together with (paragraph 17) communal representation for Indian Christians in Madras; for Europeans in Madras, Bombay, Bengal, the United Provinces and Bihar and Orissa; and for Anglo-Indians in Madras and Bengal. . . .

With regard to the proportion of Muslim seats, the Committee felt themselves bound by the terms of the Lucknow Pact, and gave their reasons in the following terms:—

Reasons for acceptance of Lucknow Pact by Franchise Committee

"The great majority of Indian witnesses and the representatives of associations, political and non-political alike, not excluding those in which Hindu interests preponderate, adhered to this compact, and it seems to us that any departure from its terms would revive in an aggravated form a controversy which it has done much to compose. In the provinces of Bombay, Bengal, the United Provinces, the Punjab and Bihar and Orissa, the local Governments recommended us to adhere to the compact whilst the Madras Government provided in the first of its alternative schemes approximately the proportion of Muslim representation which the compact fixed. In the interests of India as a whole, we have, therefore, felt ourselves amply justified in accepting the compact as a guide in allocating the proportion of Muslim representation in the Councils".

The Committee recommended separate communal seats for Muslims, Sikhs and European Commerce in the Assembly, and for Muslims and Sikhs in the Council of State. The formation of the Council of State was subsequently wholly changed on the recommendation of the Joint Select Committee of Parliament and the proposals of the Franchise Committee for indirect election to both bodies were set aside. The detailed recommendations of the Franchise Committee on this subject need not, therefore, be examined in this note.

Having accepted the recommendations of the Franchise Committee that separate communal representation must be retained for Muslims and extended in certain provinces to other minority communities, the Government of India then proceeded to discuss the number of seats to be given to the Muslims. They noted that the local Governments had not been unanimous in subscribing to the Lucknow Compact as giving a guide according to which the proportion of representation should be fixed. . . .

Recommendations of Franchise Committee accepted by Government of India

The Government of India were of opinion that the proportion laid down in the Lucknow Pact could not be taken to represent the right relation either between Muslims in different provinces or between Muslims and the rest of the communities.

Government of India not in favour of Lucknow Pact

The Government of India then proceeded to suggest certain considerations which they would themselves have borne in mind, had they possessed an entirely free hand to establish a ratio of Muslim seats which would bear a closer relation with their strength as a community, while at the same time fulfilling undertakings given to Muslims to safeguard them as a minority. The considerations which the Government of India stated that they would necessarily take into account were five in number—

"Considerations taken into account" by Government of India

(1) The Muslims had been definitely promised some electoral advantages on the ground of their political importance.

(2) The Muslims are the poorer community and, therefore, any property qualification common to them and the Hindus would make the Muslim electorates smaller in proportion to the Muslim census than would be the case with the Hindus.

(3) The census strength of the Muslims does not correspond to their political strength. In Bengal and Assam the Muslims are politically weaker than their numbers would indicate, while in the United Provinces with 14 per cent. of the population they

are incomparably stronger than in Bihar and Orissa with 10.5 per cent.

(4) Though a majority can always impose its will upon a minority, the effectiveness of a minority depends upon its being large enough to have the sense of not being entirely overwhelmed.

(5) Whatever advantage is given to the Muslims is taken away from some other interest or interests.

The Government of India concluded that these considerations would suggest a system of weightage leading to very different results from those agreed upon at Lucknow; they took the view, however, that the Congress-League compact was an accomplished fact and a landmark in Indian politics which they could not possibly ignore; they felt, therefore, like Lord Southborough's Committee, that whatever the defects of the compromise it was not one that they ought to re-open. They, therefore, accepted the conclusions of the Committee in favour of the proportions agreed upon in the Lucknow Pact with one exception. The Government of India felt that the Muslim representation proposed for Bengal was manifestly insufficient; they doubted whether the claims of the Muslim population of Eastern Bengal had been adequately pressed when the Congress-League Pact was in the making. They recommended, therefore, that the Bengal Muslims should be allotted 44 seats instead of 34 and left it for further consideration whether the addition should be obtained by enlarging the Council or by withdrawing seats from other interests or by a combination of both plans. . . . .

Franchise Committee's plan accepted by Government of India, except in case of Bengal

There were some differences between the Government of India and the Franchise Committee on the extent of communal representation in the Central Legislature. The Committee had applied the Congress-League compact which related to the Indian Legislature as a whole to the Assembly as a unit by

Differences between Franchise Committee and Government of India regarding Muslim seats in Central Legislature

itself, and recommended 24 Muslim seats out of 73 Indian elected seats; the Government of India based their proposals on Muslim strength in the different provinces and suggested 12 Muslim seats out of 69 Indian elected seats The Government of India were, however, prepared to accept the Committee's proposals, with one dissentient who thought the Muslim representation excessive. In the opinion of the Government of India the Committee had unduly restricted European representation on the Assembly, they reserved their opinion on that point. With regard to the Council of State, after opposing the Committee's suggestions for the form in which it should be elected, the Government of India stated that they did not attach the same weight as the Committee had done to the need for nicely adjusting the claims of the provinces and the communities; their aim was the representation of all important interests on a broad scale, and nomination would be used to adjust inequalities in communal representation.

Recommendations of Joint Select Committee

We can now turn to the recommendations of the Joint Select Committee of Parliament, noting at once that contrary to the recommendations of the Franchise Committee the Select Committee required direct election to both chambers of the Indian Legislature and also insisted upon the constitution of the Council of State as "a true second Chamber". The Select Committee avoided entering into any discussion of the arguments for or against communal electorates, but differing from the Government of India they accepted "the recommendations of the Franchise Committee in respect of the proportionate representation of Muslims based on the Lucknow Pact". . . . .

In the meantime the Government of India were engaged in revising the recommendations made in their Fifth Reforms Despatch on the lines indicated by the Joint Select Committee of Parliament. Local Governments were consulted and revised schemes for the constitution of the Indian and Provincial Legis-

Revised recommendations of Government of India regarding communal distribution of seats in Central Legislature

latures were submitted to the Secretary of State early in 1920. For the Legislative Assembly out of 103 elected seats (including one technically nominated seat to be filled by nomination as the result of an election held in Berar) the Government of India recommended 30 seats for Muslims, 2 for Sikhs and 9 for Europeans. In the Council of State, out of 32 elected members, the Government of India recommended 10 seats for Muslims and 1 for Sikhs. In addition (by the representation of commercial interests) 3 seats were reserved for Europeans. In submitting their proposals to the Secretary of State, the Government of India observed with reference to the distribution of seats in the Legislative Assembly that any scheme of distribution had to satisfy two exacting conditions; it must secure to each province its fair share of the total representation, and it must provide for Muslim representation on the lines of the Lucknow Pact. It was found impossible consistently with these conditions to distribute the general and Muslim seats in each province in strict accordance with the proportions adopted in the case of provincial Legislative Councils.

Revised recommendations of Government of India regarding Muslim seats in Provincial Councils

In the revised proposal submitted by the Government of India for carrying out the recommendations of the Joint Select Committee of Parliament with regard to the constitution of the provincial Legislative Councils, effect was given to the injunction of the Joint Committee that the proposals of the Franchise Committee in respect to the proportional representation of Muslims based on the Lucknow compact should be accepted. An exception was, however, made in the case of the Punjab Legislative Council for which the Government of India proposed to fix the percentage of Muslim seats on the basis of the territorial seats only without including the non-territorial special constituencies in the calculation. The Government of India observed that as the Muslims in the Punjab formed more than half the population it seemed reasonable to assume that they would

secure their fair share of the latter seats. The adoption of the Lucknow compact had given rise to claims by the Sikhs which the Government of India were unable to accept, but which were undoubtedly regarded by the Sikh community as warranted by the concessions accorded to the Muslims. The claim put forward and persistently pressed by the Sikhs both in representations to the local Government and to the Government of India was for one-third of the total number of elected seats in the Punjab Legislative Council. The proposal of the local Government on the other hand was that the Sikhs who constituted 10.7 per cent. of the provincial population should be allotted 10 out of 58 elected seats or, in other words, 17 per cent. which gave them as much as was consistent with the just treatment of the Hindus who formed 24 per cent. of the population. In order to satisfy the claims of the Sikhs it would have been necessary either to revise the Lucknow Pact in relation to the Punjab or to commit injustice to the Hindus: for that reason the Government of India did not support any addition to the 10 seats recommended by the local Government.

Case of the Punjab Muslims

Claims of the Sikhs

In its sessions held in 1924, 1925 and 1926 the All-India Muslim League continued to emphasise its adherence to separate representation for Muslims and in moving his resolution on the subject in the All-India Muslim League held in December 1926, Mr. Jinnah said:

Muslim League demand for separate electorate

". . . . .There is no escaping from the fact that communalism does exist in this country. By mere time and sentiment it could not be removed. Nationalism could not be created by having a mixed electorate".

Throughout 1926, which was the year of the serious communal riots in Calcutta, a movement against communal electorates, certainly among Hindus, began to gather increased weight. Communal electorate were stated in short to be the root-

Hindu agitation for abolition of separate electorate

cause of the dissension between the two communities. Fears that Government might yield to the agitation which had been started for the abolition of the system led Muslims to seek an assurance that no change was contemplated at the time. This assurance was publicly given by His Excellency in a speech at the Chelmsford Club in August 1926 in which, after appealing to the communities to come to terms, he stated that the problem of communal representation was one which would naturally fall within the purview of the Statutory Commission, and the Government did not intend to take any steps either to curtail or extend the system in advance of the inquiry which the Commission would make. Shortly after, in replying to an address presented by Muslims at Poona, His Excellency stated. . . .

Viceroy's pledge to Muslims

". . . .The question of communal representation about which you have expressed anxiety is of great complexity. I have said elsewhere its only justification is that it should be the means through which every community should feel free to give what it can to the common cause of the service of India. But if this ultimate purpose is obscured and if communal representation comes to be regarded as an end in itself, then it has the effect of narrowing the horizon of our loyalty. What was designed to promote the cause of unity may quickly become the seed-bed of division when different communities have to live together. It is incumbent upon each to recognise that the cause of peace demands a wide measure of mutual toleration and restraint. That which we claim for ourselves we must be ready to accord to our neighbours. This spirit, if it may but grow, will be found to be a better and more lasting solvent for the present discords than any artificial methods of representation, but until we can reach this state communal representation in some form is likely to be necessary and it is probable that a substantial modification of it must largely depend upon the general consent of all communities".

The subject of communal representation had been referred to by the Secretary of State in a speech delivered in the House of Lords on the 28th of July, 1926. . . . .It was doubtless true, said Lord Birkenhead, that the system of communal representation tends to stereotype cleavage, but there is not the slightest ground for an assertion that, had Parliament insisted in the teeth of violent opposition in carrying reforms in 1919, which embodied such representation, Hindu-Muslim relations would have become more amicable than lately they have been. On the other hand it was almost certain that they would have become very much more violent and embittered.

Lord Birkenhead on communal electorate

During the course of that debate[1] no Muslim member had expressed the view that the time had yet come when communal electorates could be dispensed with. In the circumstances there was some surprise when a statement was issued to the press a few days later by a number of Muslim members of the legislature to the effect that at an informal conference which they had held among themselves they had agreed to the institution of joint electorates, on the condition that Sind should be separated from the Bombay Presidency and made a separate province and secondly, that reforms should be introduced in the North-West Frontier Province and Baluchistan on the same terms as in any other province of India. If these conditions were accepted by the Hindu-Muslim communities Muslims would accept joint electorates in all provinces, and would make to the Hindu minorities in the provinces where Hindus were in a minority the same concessions that the Hindus were prepared to make to Muslim minorities elsewhere. In the Punjab and Bengal representation should be on the basis of population and in the Indian Legislature Muslims should be represented by not

Delhi Proposals of March, 1927.

[1] The debate on Sir Sankaran Nair's resolution in the Council of State (March, 1927) in favour of abolition of communal electorates.

less than one-third of the members chosen by mixed electorates. Immediately after the statement containing these conditions had been communicated to the press some of those who had been present at the conference wrote to the news-papers denying that they had agreed to the conditions and saying that they could not accept joint electorates on any terms. Mr. Jinnah who had taken a leading part in convening the conference himself issued a further statement to the press in which he said that the Muslim proposals must be accepted or rejected *in toto;* while about three weeks later the representative[1] in the Assembly of the North-West Frontier Province gave a statement to the press in which he said that if Muslims desired to preserve their identity, they should not allow themselves to be merged politically in the Hindu majority. He concluded by saying that a joint electorate would be an unequal combination disadvantageous to the weaker side. From comments made in the Muslim press throughout India it seemed clear that whatever the reception the Hindus might give to the conditions suggested at the conference of Muslim leaders there was little chance of their finding favour with Muslims generally.

Mr. Jinnah's view

Three days after the Muslim conference, the Hindu members of the Indian legislature met in Delhi to consider the Muslim proposals. At this meeting the following principles were generally accepted as the basis of further discussion:

Hindu reply to Delhi Proposals, March, 1927

(1) There should be joint electorates for all the legislatures throughout India.

(2) Everywhere seats should be reserved on the basis of population.

(3) Religious and quasi-religious rights should be safeguarded by specific provisions in the constitution.

(4) Problems involving the rearrangement of the provincial boundaries should be left alone for the time being.

[1] A 'representative' nominated by the Government.

17. DEBATE ON NATIONAL DEMAND IN INDIAN LEGISLATIVE ASSEMBLY[1], 1924.

["On the 23rd September, 1921, a resolution was moved in the Legislative Assembly by Rai Jadu Nath Mozumdar Bahadur for the establishment of autonomy in the provinces and the introduction of responsibility in the Central Government. . . . At the end of the debate, Sir William Vincent (the then Home Member) suggested a formula which was finally adopted as an amended resolution. It ran thus 'That this Assembly recommends to the Governor-General in Council that he should convey to the Secretary of State for India the view of this Assembly that the progress made by India on the path of responsible government warrants a re-examination and revision of the constitution at an earlier date than 1929' This resolution was adopted by the Assembly without division. The Government of India submitted a report of this debate to the Secretary of State On the 2nd November, 1922, the Secretary of State (Lord Peel) sent a despatch to the Government of India . The Secretary of State was then apparently of the opinion that the possibilities of the new constitution had not been exhausted and he assigned three reasons against further amendment of the Government of India Act The first reason was that progress was possible under the existing constitution The second reason was that the merits and capabilities of the electorate had not been tested by time and experience The third reason was that the new constitutional machinery had still to be tested by time and experience On these grounds he refused to entertain the proposal for advance as contained in the resolution of the Assembly referred to above This despatch of the Secretary of State was followed by a resolution moved in the Assembly by Diwan Bahadur T Rangachariar on the 22nd February, 1923, expressing extreme dissatisfaction with it. The debate on this was adjourned, after a certain amount of discussion, *sine die*. Another resolution was moved by Dr H S Gour on the 18th July, 1923, which recommended to the Governor-General to move the Secretary of State to carry out his suggestion contained in his despatch on the subject of the further reforms possible under the Constitution. This resolution was carried in the Assembly by 43 votes to 30[2]".

Resolution for revision of Constitution

Lord Peel's Despatch

Resolutions on Lord Peel's Despatch

On February 5, 1924, Diwan Bahadur T. Rangachariar moved the following resolution in the Legislative Assembly

"This Assembly recommends to the Governor-General in Council that he be pleased to take at a very early date the

[1] See Legislative Assembly Debates, Vol. IV, Part I, pp. 221-222, 348-400, 518-582, 709-769.

[2] *Report of the Reforms Enquiry Committee*, pp. 133-134.

necessary steps (including if necessary procuring the appointment of a Royal Commission) for revising the Government of India Act so as to secure for India full self-governing Dominion Status within the British Empire and Provincial Autonomy in the Provinces"

On February 8, 1924, Pandit Motilal Nehru moved the following amendment·

"The Assembly recommends to the Governor-General in Council to take steps to have the Government of India Act revised with a view to establish full responsible government in India and for the said purpose

Pandit Motilal Nehru's resolution

(*a*) to summon at an early date a representative Round Table Conference to recommend with due regard to the protection of the rights and interests of important minorities the scheme of the constitution for India, and

(*b*) after dissolving the Central Legislature to place the said scheme for approval before a newly elected Indian Legislature for its approval and submit the same to the British Parliament to be embodied in a statute"

On February 16, 1924, the amended resolution was adopted by the Assembly, 75 non-officials voting for and 48 (23 officials and 25 non-officials) voting against Of the 25 non-officials who opposed the resolution only 4 were elected members (3 Muslims, 1 Parsi) 17 Muslim members, including Mr M. A. Jinnah, voted for the resolution]

I. Speech[1] of Sir Malcolm Hailey[2], February 8, 1924.

I shall address myself only to the main proposition, that India is now ready, and that India must have, at once, full self-governing Dominion status I say we cannot afford to allow any one to be in doubt as to the attitude of Government on that question. There are many interests concerned. There are the Indian States . . . I do not say what their attitude is likely to be; but it is of vital interest to them whether they will at an early date have to deal with an Executive Government which is entirely responsible to an Indian Legislature, or whether

"Many interests concerned" in India's attainment of Dominion Status:

[1] This speech was delivered in connection with Diwan Bahadur Rangachariar's resolution.

[2] Home Member in Governor-General's Executive Council.

they will have to deal with a Governor-General in Council who, as now, is responsible to the British Parliament. And, again, European commerce will desire to know,—I say nothing of what its feelings are likely to be at the contemplated change; but men who have put great sums of money into India, and may be daily increasing the sphere of their operations, have a right to know if we contemplate an early change of government. The men entering our services will desire to know. I predict nothing as to their feelings. I only say that all men entering our services, whether civil or military, whether European or Indian, have a right to know if we intend a radical change of government at an early date. There is another interest, a great and extensive interest, which will desire to know our attitude; I mean the minority communities . . . it is clear that they ought to know whether the Indian Government is prepared to recognize such a step, and whether the British Government is prepared to entertain it.

(1) Indian States

(2) European commerce

(3) Services

(4) Minorities

. . . Mr. Rangachariar's proposition, . . . as it stands, is opposed to the Government of India Act and in two important respects. The pronouncement of August 1917 spoke of "the gradual development of self-governing institutions with a view to the progressive realisation of responsible government in India". That is also the term used in the Preamble to the Act; that is the term used in the Royal Warrant of Instructions which adds, that "thus will India be fitted to take her place among the other Dominions". The term has its significance; we know that it was deliberately chosen. The Congress and the League had asked the Imperial Government to proclaim its intention to confer self-government on India at an early date and the Cabinet chose the present term. The expression used in the Act is a term of precision, conveying that the Executive in India would be responsible to the Indian Legislature instead of to the British Parliament. If you analyse the term "full Dominion Self-Government", you will see that it is of somewhat wider extent, conveying

Significance of the term "responsible government"

Significance of the term "full Dominion Self-Government"

that not only will the Executive be responsible to the Legislature, but the Legislature will in itself have the full powers which are typical of the modern Dominion. I say there is some difference of substance, because responsible government is not necessarily incompatible with a Legislature with limited or restricted powers. It may be that full Dominion Self-Government is the logical outcome of responsible government, nay, it may be the inevitable and historical development of responsible government, but it is a further and a final step. The second point is this, that the Preamble of the Act specifically provides for the realisation of its ideal by successive stages. Now, it is here perhaps that the real cause of our difference arises. We hold both to the objective and to its realisation by stages. You . . . now object to the imposition of stages . . . You definitely repudiate the imposition of stages in that progress. . . .

Constitutional progress must be by stages.

I have to ask three, perhaps four questions of the Assembly. Is Dominion Self-Government to be confined to British India only, or is it to be extended to the Indian States? If it is to be extended to the latter, under what terms have they agreed to come in, for I assume that you have got their agreement to this proposition? Are they to be dependent only on the Crown, or are they to be controlled by the new Government responsible only to the Indian Legislature instead of a Government responsible to the British Parliament? Will they accept that? . . .

Is Dominion Self-Government to be extended to Indian States?

I pass to a second problem . . . No conception of full Dominion Self-Government is possible which retains in the hands of an authority other than the Dominion Legislature itself the protection of minority communities . . . I know that we are told that this is no real difficulty, and that it is we who have served, whether purposely or otherwise, to keep communal difficulties alive; and that when the day of independence has dawned, they will disappear in the bright sunshine of the new freedom. I do not

Protection of minorities

see an equal feeling of confidence reflected in the preamble of the new National Pact, for it definitely states that the only obstacle to Swaraj is "the lack of mutual understanding in the different communities of India" . . .

Now I take a third problem . . . I mean defence. . . . I would remind you again in all earnestness that there are difficulties in the attainment of your ideal of a Dominion army which will in any case long delay its consummation . . . I warn my friends of the non-martial classes that the power which is now placed in their hands by the ballot box will speedily gravitate into other hands. There will be no British officers and no British troops to hold the balance.

Problem of defence

I have one more question to ask. The demand for Dominion Self-Government assumes that its advocates have satisfied themselves that there exist those social and political foundations on which alone such constitutional structure can safely rest . . . I do claim that for the moment political advance in India has already outrun social advance. . . .

"Political advance has outrun social advance".

II. Speech[1] of Motilal Nehru, Feb. 8, 1924.

. . . As will be seen, the proposition divides itself into three parts. The first declares the goal; the second and third the various stages which have to be gone through to reach the goal. Now, so far as the first part is concerned, there is no exception taken to it to-day in this House. . . .

Three parts of amendment

. . . It will be seen . . . that the first part of my proposition is unexceptionable. That there is a deep-seated desire for Swaraj in the country I do not think any one will doubt. That that desire proceeds from the natural cravings of the human heart for freedom, I do not think any one will seriously deny. That being so, I say the first and the last requisite for full responsible government is completely established. According to all modern conceptions, what

"Deep-seated desire for Swaraj"

[1] With this speech the amendment was moved.

you have to look to is a genuine desire proceeding from the natural instinct to which I have referred and the determination to attain that desire. That is all that entitles a nation, that is all that has ever entitled a nation, to complete self-government and complete responsibility. But I am not going to put my case so high to-day. The desire for Swaraj . . . has passed through the usual stages of ridicule and intimidation, rather unusually prolonged, and has now, it may be said, and properly said, emerged from an ordeal of fire unscathed and pure . . . what I ask for by my amendment is, without mincing words, a complete overhauling of the Government of India Act. The Honourable the Home Member has made a very strong case . . . against that proposition. Now, Sir, what is the chief plank in his argument, and what is the great argument that has always been employed against any further advance in political rights to be given to the Indians? It is said that those who desire any further advance are precluded by the Government of India Act itself from making the demand, because the Preamble sets out in clear words that responsible government will only be granted by successive stages and that Parliament shall be the sole judge of the manner and measure of each advance, or words to that effect. And it is said that you have no business to come forward and ask for anything. It is for you to satisfy Parliament, to satisfy us who are the agents of Parliament here —I mean the Government—that you deserve a further advance and you shall have it but not before that. Now, Sir, our answer, straight and clear, as unequivocal as the Preamble, is that that Preamble is bad, the whole law, the whole Act is as bad as could possibly have been devised to postpone, to stifle and to suppress the natural desire which I have already mentioned . . . what answer is it that the Act provides so and so, when the one reason why we do not want it is precisely because it provides so and so. Sir, it is arguing in a circle . . . Now, Sir, I ask what special sanctity is there in this particular Act of Parliament that we must not say a word

Wanted "a complete overhauling of the Government of India Act"

Official argument against further political advance

Reply to official argument

against it? Wherein does it differ from other Acts of Parliament, all of which may be modified or repealed at any time? We ask for the modification of that Act or for its repeal, whatever may be necessary, and in doing so I really do not know what unconstitutional or improper act we are guilty of.

There is no special sanctity in Act of 1919.

Then, the next question is, "Is the modification that we ask for justified under the circumstances"? That really is the crux of the whole matter. It has been said . . . that the Act contains within itself enough to give us that from which we can grow, from which we can acquire more by the building up of conventions and things of that sort . . . I say that . . . it will take very strong authority, and that of the weightiest character, to convince me that any conventions can grow so as to defeat the express provisions of a Statute of Parliament . . . But, even if such conventions could grow, I submit we are not content to let them grow in the way in which it has been suggested. We wish that our rights should be formulated, recognised and clearly admitted, and not only admitted and recognised but actually conceded to us.

Growth of conventions cannot change the provisions of Act of 1919.

. . . we in the Congress have demanded ever since the year 1919 full responsible government; call it Swaraj, call it Dominion Status, call it anything you like . . . after the year 1919 the Congress has committed itself to a policy and a programme which were quite new and which had not been adopted before that year . . . From the year 1919 up to the present day the demand has been consistent that what we require is responsible government, that the Government of India Act is wholly inadequate and disappointing. The Congress has said that it will not rest until it has obtained either a revision or a repeal of that Act. . . .

Congress demand since 1919

. . . Personally speaking, I say there is no constitution for India. I refuse to believe in this constitution . . . I do not think that anything deserves the name of a constitution for a country in

"There is no constitution for India".

the making of which the people of the country did not have a voice. . . .

Now, Sir, the process laid down is nothing, I submit, but a reversal of the natural order of things. What the Government of India Act provides is that an extraneous authority has the right to determine the stages, the manner, the measure and the time for the advance of a nation to attain its freedom. I do not think there is any one who will question now or seriously argue against the proposition that if there is anything by which nations and communities—big and small—should be governed and should be guided, it is their will . . . clause 3 of my amendment has a direct reference to and is suggested by the right of self-determination. Now, that is the principle which we want the British Government and Parliament to accept. . . .

Right of self-determination

* * * *

Now, I shall try to answer the questions which have been put by the Honourable the Home Member . . . His first question was: Is this Dominion Status to be confined to India or will it include Indian States as well, and, if so on what terms? I say it all depends on our preliminary conversations. If the Indian States want to come in, let us have their representatives too. If they do not want to come in, we do not want them. . . .

Reply to Home Member's questions

Indian States

Then the next thing was that Dominion Status of course implies protection of the Dominion by its own armies. I do realise that and we are perfectly willing to confer with you as to how that may be done . . . what army have you got? Is it not the Indian Army—I do not say it is the sole Army that protects us but is it not the largest factor in the British Army in India? I need not go into what the Indian Army has achieved . . . were they Indian soldiers or were they not?

Defence

When it comes to the carrying on of the government, I find three distinguished countrymen of mine on the Government benches. . . .

Then the next question is, there are these communal differences. Of course communal differences there are. Unfortunately they exist. We have not denied them. But as my friend the Honourable the Home Member has read an extract from the Congress Civil Disobedience inquiry Committee, where the existence of these communal differences has been admitted, perhaps he will like to hear what he has overlooked—the remedy suggested and the reason for it.

Communal problem

Now in that report we find—. . . .

"The Prime Minister of England in the famous speech recently delivered by him in the House of Commons has thus justified the maintenance of the Indian Civil Service for all time to come:

'There is a great variety of races and creeds in India, probably greater variety than in the whole of Europe. There are innumerable divisive forces there, and if Britain withdrew her strong hand, nothing would ensue except divisions, strife, conflict and anarchy'."

The report proceeds:

"Now the strong hand of Britain is the British Civil Service in India. Remove the cause of 'divisions, strife, conflict and anarchy' and you take away the sole justification for the continuation of that distinguished service. There can be no question inter-communal differences constitute the sole cause of 'divisions, strife, conflict and anarchy' and that inter-communal unity which means the removal of that cause means also the removal of all justification for the continuance of the Civil Service."

Connection between Indian Civil Service and communal problem

Then, after dealing with the causes, the Committee go on to say:

"The only radical cure for the disease is the entire elimination of the mischief-maker; but that, in view of the conflict of interests . . ., cannot happen unless and until the costly maintenance of the Indian

Remedy for communal differences: establishment of Swarayja

Civil Service ceases to depend upon 'divisions, strife, conflict and anarchy'; in other words, unless and until Swarajya is fully established. It is only then that the mischief-maker will lose his occupation and think of some other opening for his activities."[1]

18. LORD IRWIN ON RELATIONS BETWEEN CENTRAL GOVERNMENT AND CENTRAL LEGISLATURE[2], 1926.

Popular representatives may escape sense of responsibility.

Speaking of central politics, so long as there is in the hands of the Governor-General some reserve power by which in the last resort they can secure what they conceive to be essential, it is evidently possible for popular representatives to escape the sense of responsibility that ought to accompany the power, even though only partial, which they exercise. Again, so long as the Government of India is not fully responsible in the strict sense of the word, it is impossible for parties or politicians to feel the salutary check of being compelled to replace in the task of government those who have been the targets of their criticism and attack. It therefore follows

"National Demand" (1925)

[1] After the publication of the Report of the Reforms Enquiry Committee (March, 1925) Sir Alexander Muddiman, the then Home Member of the Government of India, moved a resolution in the Legislative Assembly on September 7, 1925, recommending the acceptance of the principle underlying the Majority Report An amendment, now known as the National Demand of 1925, was moved by Pandit Motilal Nehru. This amendment reiterated and confirmed the demand contained in the resolution passed by the Assembly in February, 1924, asked the Governor-General in Council to take immediate steps to move the British Government to make a declaration in Parliament embodying certain fundamental changes in the Indian constitution which would introduce full responsible government, and recommended the summoning of a Round Table Conference to frame a detailed scheme of government which, after approval by the Legislative Assembly, would be submitted to Parliament to be embodied in a Statute. This amendment was carried by 72 votes to 45.

[2] Address to European Association, Calcutta, December, 1926.

that one of the principal distinctions between the different Indian parties is apt to be the degree of vehemence with which they assail the policy of Government. The latter, necessarily in great degree inarticulate, is presented as the common opponent of patriotic citizens.

Government—common target of all Indian parties

These are real difficulties, unavoidable so long as it is necessary to retain the final power in the hands of a Government not directly or wholly responsible to popularly elected representatives.

19. LORD IRWIN ON PARLIAMENTARY SUPREMACY[1], 1927.

As long as the final control of Indian policy is constitutionally vested in the Secretary of State on behalf of Parliament, it is the duty of the Governor-General to guide his conduct in conformity with the general policy approved by the Imperial Parliament . . . It is his duty with his Government to seek faithfully to represent to the Imperial Government what he conceives to be India's interests, and he must count on the help of the Legislature to enable him to do this fairly. On the other hand it is possible that he may be able to help India by telling those who represent her in her Councils, from his own knowledge, of the manner in which, and the angle from which, the judgment of Parliament is likely to be formed.

'Final control of Indian policy' vested in Parliament

I do not ignore the fact that there is a section of opinion in India which rejects the right of Parliament to be the arbiter of the fashion or the time of India's political development. I can understand that opinion, I can acknowledge the sincerity of some of those who hold it, but I can devise no means of reconciling such a position with the undoubted facts of the situation.

But there is another section of opinion, which while hesitating to prefer so fundamental an objection to any right of Parliament to be the judge of

Indian point of view

[1] Address to Legislative Assembly, January, 1927.

these matters, would yet say in effect that it was indefensible for Parliament to exercise its judgment in any sense but that of granting to India forthwith a wide, if not complete extension of responsible power.

Parliament—judge of political progress in India

The distinction between these two lines of criticism is narrow; for Parliament would be no real judge if its title were held to depend for sanction upon the judgment that it delivers, and it is scarely possible to impugn its right to deliver a free verdict, without challenging its title to sit in judgment on the case.

20. INDIAN NATIONAL CONGRESS ON SIMON COMMISSION, 1927.

[On November 8, 1927, Lord Irwin announced the formation and composition of the Simon Commission. He declared that the appointment of the Commission two years before the fixed statutory period was due to Indian political pressure. But Lord Birkenhead's biography makes it clear that his main object in advancing the date of enquiry was to keep in his own hands the nomination of the personnel of the Commission and to prevent the risk of a future Labour Government having anything to do with the composition of the Commission On December 10, 1925, he wrote to Lord Reading, ". . . . .I always had it plainly in mind that we could not afford to run the slightest risk that the nomination of the 1928 Commission should be in the hands of our successors. You can readily imagine what kind of a Commission in its personnel would have been appointed by Colonel Wedgwood and his friends I have, therefore, throughout, been of clear opinion that it would be necessary for us, as a matter of elementary prudence, to appoint the Commission not later than the summer of 1927."[1]

Birkenhead's policy

When the Simon Commission was successfully boycotted, Lord Birkenhead wrote to the Viceroy in February, 1928, "I should advise Simon to see at all stages important people who are *not* boycotting the Commission, particularly Moslems, and the depressed classes. I should widely advertise all his interviews with representative Moslems. The whole policy now is obvious. It is to terrify the immense Hindu population by the apprehension that the Commission is being got hold of by the Moslems and may present a report altogether destructive of the Hindu position, thereby securing a solid Moslem support, and leaving Jinnah high and dry".[2]]

[1] See Birkenhead, *The Last Phase,* pp. 250-251.
[2] Birkenhead, *The Last Phase,* p. 255.

I. Resolution, Madras Session, 1927.

Whereas the British Government have appointed the Statutory Commission in utter disregard of India's right of self-determination, this Congress resolves that the only self-respecting course for India to adopt is to boycott the Commission at every form. In particular (*a*) this Congress calls upon the people of India and all Congress organisations in the country (i) to organise mass demonstrations on the day of the arrival of the Commission in India, and similar demonstrations in the various cities of India which the Commission may visit; (ii) to organise public opinion by vigorous propaganda so as to persuade Indians of all shades of political opinion effectively to boycott the Commission.

Boycott of Commission

Instructions to Congress Organisations

(*b*) This Congress calls upon non-official members of the Indian Legislatures and leaders of political parties and communities of India and all others not to give evidence before the Commission nor co-operate with it in any manner, public or private, nor attend or participate in any social functions given to them.

Appeal to non-official members of Legislatures

(*c*) This Congress calls upon the non-official members of the Indian Legislatures (i) neither to vote for nor serve on Select Committees that may be set up in connection with this Commission; (ii) to throw out every other proposal, motion or demand for grant that may be moved in connection with the work of the Commission.

(*d*) This Congress also calls upon the non-official members of the Legislatures not to attend meetings of the Legislatures except for the purpose of preventing their seats from being declared vacant or for the purpose of making the boycott effective and successful or for the purpose of throwing out a Ministry or of opposing any measure which, in the opinion of the Working Committee of the Congress, is detrimental to the interests of India.

Partial boycott of Legislatures

(*e*) This Congress authorises the Working Committee to confer with and secure the co-operation, wherever possible, of other organisations and parties with a view to make the boycott effective and complete.

II. Presidential Address of M. A. Ansari, Madras, 1927.

Keen disappointment[1] and surprise have been expressed at the exclusion of Indians from its personnel. I must confess I do not share any of these feelings. I am neither disappointed nor surprised. This was exactly what I had anticipated. It is not a question of the appointment of a Hindu peer or a Muslim Knight, nor is it a question whether Indians should participate in its work as members, assessors or advisers. The principle involved is totally different. It is basic and fundamental. No sane or self-respecting Indian can ever admit the claim of Great Britain to be the sole judge of the measure and time of India's political advance. We alone know our needs and requirements best and ours must be the decisive voice in the determination of our future. It is our inherent and inalienable right. Taking its stand on these principles the Congress has all along advocated the convening of a Round Table Conference of the representatives of India and Great Britain with plenipotentiary powers to decide the bases of the future constitution of India, to be incorporated into an Act of Parliament. It is only on these conditions that Indians can, consistently with national honour and dignity, agree to co-operate. Until Great Britain accepts these terms the Indian National Congress has no other alternative but to ask the people of India to treat the Statutory Commission as our Egyptian brothers treated the Milner Mission, and leave it severely alone. We can have no part or lot in a Commission which has been appointed in direct defiance of the declared will of the people of India.

Indians cannot 'ever admit the claim of Great Britain to be the sole judge of the measure and time of India's political advance'.

Analogy of Milner Commission

[1] In his Presidential Address at the Calcutta session of the Congress (1928) Pandit Motilal Nehru described the Simon Commission as a "colossal fraud".

21. SIMON COMMISSION ON RELATIONS BETWEEN THE SECRETARY OF STATE AND THE GOVERNMENT OF INDIA.

[The Statutory Commission consisted of seven members: Sir John Simon, Lord Burnham, Lord Strathcona, Mr. Edward Cadogan, Vernon Hartshorn and Mr. C. R. Attlee. The Chairman, Sir John Simon, was a Liberal, there were two Labour Members and four Conservatives It was later on laid down that the members of the Commission were to co-operate with the elected members of the Indian Legislatures, who were to report simultaneously but not jointly with the members of the Commission. The Indian Legislative Assembly boycotted the Commission, but partial co-operation was received from the Provincial Legislative Councils. The *Report* of the Commission was issued in May, 1930]

Progress of 'Delegation'.

264. We now turn to consider the relations between the Secretary of State and the Secretary of State in Council on the one hand and the Government of India on the other. Their statutory control over the Government of India is still in theory complete within the field left to them by the Act of 1919. But for various reasons it is exercised in practice to an extent very much less than a literal interpretation of the Act would warrant. It goes without saying that the "superintendence, direction and control" by an authority in Whitehall of all "acts, operations and concerns" involved in the government of a subcontinent 6,000 miles away is impossible. The essential process of delagation had gone on intermittently for many years before the Reforms, but the policy underlying the Act of 1919 gave it a strong impetus. Delegation, it will be understood, differs from a statutory devolution of powers, in that it does not relieve the Secretary of State from his responsibility to Parliament; he takes the risk of trusting a subordinate authority to decide matters for which by statute he remains responsible.

Difference between 'Delegation' and 'Statutory devolution of powers'.

265. In the sphere of legislation it is possible to lay down rules to give effect to the general policy. Before the Reforms, no Bill other than a purely

formal one could be introduced into any Indian legislature until the Secretary of State in Council had seen and approved its actual terms, or at least a full statement of its scope and purpose. Under the existing rules, which date from 1921, Bills to be introduced in the Central Legislature need not be referred for the approval of the Secretary of State in Council unless they relate to a limited number of subjects; for example, imperial or military affairs, foreign relations, the rights of European British subjects, the law of naturalisation, the public debt, customs, currency and shipping. It is left to the Governor-General in Council to refer for the previous approval of the Secretary of State in Council such provincial Bills as he thinks fit. Since these orders were passed, the instances in which a provincial Bill has been submitted to the Secretary of State could be counted on the fingers of one hand; and though in one or two instances considerable discussion has taken place between the Secretary of State and the Governor-General, no instance can be cited of final objection by the Secretary of State to the introduction of a Bill which the Government of India proposed to promote in the Central Legislature.

Control of Secretary of State over Bills in Central Legislature

Control of Secretary of State over Bills in Provincial Legislature

But the need for prior reference to the Secretary of State necessarily involves delay and, if a prompt decision is essential, may cause difficulty, *e.g.*, when, in the course of the discussion of a Bill, unforeseen points arise on which negotiations between the Government and members of the Assembly offer hope of a compromise; on the other hand, delay may sometimes afford opportunity for further consideration.

22. SIMON COMMISSION ON WORKING OF REFORMS AT THE CENTRE.

The Contrast with Westminster

248. The first essential for a correct understanding of the relations of the Central Government with the Central Legislature in India is to divest the mind of analogies drawn from the British

parliamentary system. A British Cabinet can only survive so long as it has the support of a majority in the House of Commons. The Central Executive in India—the Governor-General in Council—is, on the other hand, entirely independent of, and, indeed, can seldom count with confidence on, a majority in the Indian Legislature. Yet no defeat can drive its Members from office, and the statutory powers of the Governor-General or the Governor-General in Council are sufficient to prevent opposition from bringing administration to a standstill. Again, the Opposition in the British Parliament has always before it the prospect of a return to office, when it will itself bear the burden of administrative responsibility and have to justify its former declarations. The position in India is very different. The Opposition's opportunities for criticism and its powers of influencing the course of legislative and administrative business are extensive. But it cannot be vested with responsibility for the administration and thus be called on to reconcile its criticisms with the requirements of actual government. Such a constitutional system might be supposed to have led to wholly irresponsible criticism from the Legislature and to complete indifference in the Executive. But the course of development has been otherwise. On the one hand, while the attitude of the Assembly has often been strongly influenced by its constitutional irresponsibility, it has co-operated with Government in a good deal of constructive work. On the other hand, the Executive has been far from unresponsive to the criticism and to the suggestions of the Legislature.

Contrast between: (1) British Cabinet and India's Central Executive

(2) Opposition in British Parliament and in Indian Legislature

Actual relations between Executive and Legislature at the Centre

Grouping in the Assembly

250. There is nothing in the Indian Legislature which corresponds to the working of a party system, as that expression is understood in Britain. In view of the methods by which the Legislature is constituted, nothing else could be expected. Parties in the Lower House are predominantly communal groups. The aim of the Swarajists has been to

Absence of party system

Swarajists

create an inclusive political party, formed on national lines, and not in terms of religion, sect, or community. This attempt, however, has left the traditional religious cleavage of Indian society in the main untouched, and this cleavage constantly shows itself in debate and in voting. The Swarajists are predominantly Hindu. The Nationalist Party is entirely drawn from the Hindu community. The Central Moslem Party is entirely Muhammadan, and we believe that the Independent Party is now predominantly so . . . The impression produced upon the mind of an observer familiar with the British Parliament is not so much one of resemblance as one of difference. Groups form and re-form, but so far as its pledged supporters are concerned, the Government is in a permanent minority, and this affects the whole tone of debate. It may, and often does, carry a division by a combination of minority groups, but whenever political or racial feeling runs high, the majority of elected Members will usually be found on the Opposition side.

Predominantly communal groups

"Government is in a permanent minority".

The Official Bloc

251. The official bloc of 26 Members has throughout been regarded as under the orders of Government; it has never been found practicable to adopt the proposals of the Joint Report that officials should be allowed a free right of speech and vote, though the control has on occasion been relaxed in the case of provincial official Members. The influence of this official element has been exerted in more ways than one. A solid bloc of votes cast definitely for Government has not only had on many occasions a decisive effect on divisions in the two Houses, but it has often helped to rally to the support of Government elements which would have hesitated to support a cause which had not the strong nucleus of supporters afforded by the officials. The contribution in debate, which their experience had enabled official members to make on measures affecting the administration, has been substantial. Finally, the provincial official members have sometimes expressed the special

Official Bloc without freedom of speech and vote

Services rendered by Official Bloc

views of the Governments of their Provinces. But for the most part their membership of the Assembly is valuable to the authorities because it constitutes part of the official vote.

There is a natural tendency for nominated Members to support the Government which has selected them for membership of the Legislature, and we have heard the suggestion made that, if a nominated Member opposed Government in season and out of season, he would be likely to be passed over when his place came to be refilled in the new House. But our own impression is that nominated members have, as a rule, exercised a free judgement and have endeavoured faithfully to represent the interests committed to their charge. It is certainly the fact that some nominated members have been found quite as frequently in the Opposition as in the Government lobby. The compact European group of nine members has lent Government a discriminating support, and the Central Moslem Party has been generally disposed to cast its weight on the side of Government.

Role of Nominated Members

European and Muslim groups

Government Legislation and Resolutions

252. Up to 1928, no less than 199 Government legislative measures were passed by the Assembly, five were either rejected or withdrawn and were not considered of sufficient importance to call for the exercise of the Governor-General's overriding powers, while only four (two being the Finance Acts of 1923 and 1924) which were rejected, had to be certified. No Bill has been certified since 1925.

Government Bills

The bulk of the measures passed referred to amendments of the civil law, and were of subsidiary interest, but important fiscal, industrial, commercial, labour, currency and banking legislation was also passed. It was chiefly in the field of criminal law that the Assembly showed itself definitely antagonistic, regarding jealously any proposals to arm the Executive with wider powers.

Private Members' Bills

Between 1921 and 1928, 95 Bills were introduced by private members. Of these, 49 related to the civil law, 19 to matters connected with law and order, and only 7 dealt with social matters. The inevitably restricted facilities for non-official legislative business resulted in a large number of these private Bills lapsing. Only 15 were passed, and it is worthy of mention that 5 private measures, which passed the Assembly despite Government opposition, were rejected by the Council of State.

Government Resolutions

Not infrequently, Government has had recourse to moving Resolutions in the Legislature with the object either of ascertaining its attitude towards public matters of outstanding importance or of indicating the lines of proposed legislation of an important nature and canvassing support for it. On 57 occasions, Government consulted the Assembly in this way, and in only 8 cases was the decision opposed to the Government view.

Government supported by Council of State

In the Council of State, Government has been able to rely on support on all crucial questions. Except for a small Swarajist group, the Council of State has no political parties comparable to those in the Assembly, and purely partisan considerations bulk less largely in its consideration of measures. Government has often been able to rely on the Upper Chamber to redress the effects of precipitate decisions taken in the Lower House.

The Power and Influence of the Legislature

Influence of Legislature on Executive

253. But while the extent of Government legislation and the success in carrying it through without certification is noteworthy, the influence exercised by the Legislature on the Executive is no less remarkable. It has been directly exercised in three ways, firstly through putting questions to Government and the moving of Resolutions; secondly, through the financial power which the Assembly possesses over votable items in the Budget; and thirdly, through the work of standing committees. We will consider each of these in turn.

(i) *Questions and Resolutions.* The use of the power of interpellation has been steadily and effectively developed. At the outset, a marked tendency manifested itself to use this right to ventilate individual grievances or advance individual claims, but with growing parliamentary experience has come a perception of the true purpose of 'question time'. It is being more often used to draw attention to matters of real public importance, and Government action has repeatedly been influenced by such questions. As a method of bringing influence to bear on Government, Resolutions offer greater scope for argument and discussion. Both Houses have employed this method freely. Of the 91 divisions which took place in the Assembly on non-official Resolutions before 1928 (subsequent figures have not been furnished to us), 51 went in favour of Government and 40 against it. The extent of the influence exerted in this way can be realized by a reference to some of the matters set in motion by non-official Resolutions. The adoption of a fiscal policy of 'discriminating protection', the statutory recognition and regulation of Trade Unions, the repeal of certain laws arming the Executive with special powers in emergencies and of the Press Act, the abolition of the excise duty on cotton, and the constitution of an Indian Territorial Force may be cited as topics on which the Assembly expressed its wishes by means of Resolutions, and Government took action accordingly. Government gave full effect to 37, and partial effect to 36, non-official Resolutions passed by the Assembly. Only in 32 cases was no action taken as a result of such Resolutions. Among them are cases in which the Government had not the power to do what it was asked to do. The corresponding figures for Resolutions of the Council of State in which effect has been given fully, partially, or not at all are 32, 24 and 19.

Purpose of Interpellation

Resolutions

Important resolutions influence Government policy.

(ii) *Use of Power over Finance.* We turn now to the use made by the Assembly of its financial powers. The three Assemblies since 1921 have

Assembly and deficit budgets

differed greatly in this respect. The first was faced with a series of deficit Budgets. It therefore concerned itself with trying to secure retrenchment, and being debarred from touching the non-voted items (which formed so much of the expenditure), often made disproportionate 'cuts' in the provision under those heads which lay within its power. The cuts made in the first two Budgets, of 129 and 95¾ lakhs respectively, were accepted by Government. In 1923, however, the Governor-General in Council restored the provision of Rs. 114 lakhs for railway annuities, which the Assembly had cut out of the Budget, in pursuance of its wish to see the sum transferred from revenue to capital account, and also the sum of Rs. 3 lakhs for the Public Services Commission, eliminated by the Assembly because it disapproved of its appointment.

Rejection of demands

The attitude of the subsequent Assemblies differed greatly from that of the first. In 1924, the Swarajists, pledged to wreck the Government, succeeded in rejecting demands amounting to 4¾ crores. All these were restored by the Governor-General in Council. The third Assembly has made a less wholesale use of its powers. After registering its political protests by throwing out certain major votes, it has with a few exceptions generally contented itself with token 'cuts' with the object of drawing attention to specific grievances. The natural disinclination of the Executive to use extensively the power of restoration has on occasion, and to a limited extent, enabled the Legislature in effect to reduce non-voted expenditure. That is to say, the Government has avoided being forced to proceed to extreme measures on the voted items by agreeing to cut down its non-votable estimates. When political considerations have receded into the background, the Executive Government and the Assembly have found it possible to agree on a common policy in the pursuit of economy.

Token 'cuts'

Moderate policy of Government

(iii) *Standing Committees.* Two committees form part of the machinery of the Assembly, and,

through them, it exercises an important influence. The first—the Standing Finance Committee—consists of 14 members elected by the Chamber, with the Finance Member of Government as Chairman. Its principal function is the scrutiny of the Government's proposals for new items of votable expenditure. It is an advisory body, but the Executive has never persisted in presenting to the Assembly demands for supply against which the Committee has recorded its advice, and the Assembly has never directly dissented from its view. Finance

The other committee is the Committee on Public Accounts It is empowered to deal with the auditing and appropriation of the accounts of the Governor-General in Council, and its duty is to satisfy itself that the money voted by the Assembly has been spent within the scope of the demands granted by the Assembly. Its activities have been recognized as extending to non-voted, as well as voted, expenditure. Eight of its members are elected by the Assembly and three nominated by the Governor-General. The Finance Member is *ex officio* Chairman. Its scrutiny of expenditure is jealous and detailed, and it has notably enlarged the authority of the Assembly. Public Accounts

The Joint Select Committee made the definite suggestion that it might assist the political education of India if standing committees of the Legislature were attached to certain departments of Government, for consultative and advisory purposes.

It has not been found possible in all departments to constitute such committees, and the difficulty of assembling them has militated against their use. But in some cases, *e.g.* the Standing Committee on Emigration and the Central Advisory Council for Railways, they proved of real assistance to the departments concerned. Not only have they been effective interpreters of public opinion to the Government, but a closer acquaintance with the difficulties of Government has on more than one Other Standing Committees

occasion provided the latter with unexpected champions in the Legislature.

254. The indirect influence of the Assembly on the Government has been of still greater importance. Its extent is hardly realised by the members themselves, who are inclined to lay stress on the theoretical irresponsibility of the Executive. In practice, as officials themselves have borne witness, the Government is greatly influenced by the contact of its Members with the elected representatives. Sir William Harcourt once declared that "the value of political heads of departments is to tell the officials what the public will not stand". Under a pure bureaucracy, officials are apt to make a fetish of efficiency and to fail to give due place to the importance of acceptance by the governed of the proposals of the rulers. This weakness can be best counteracted by close contact with the unofficial mind. We believe that the members of the Central Legislature have performed this useful function, and that their influence has often been beneficial. Further, it is important to remember that the existence of a popularly elected legislature not only operates to amend Government measures after their introduction, but has much effect in deciding what measures should be introduced. Again, the existence of a body of unofficial persons with powers of interpellation sets up in the Administration itself a spirit of self-criticism and desire to avoid occasion for censure.

Central Legislature gives officials a clue to the public mind.

Influence of Central Legislature on legislation and administration

23. SIMON COMMISSION ON ROLE OF GOVERNOR-GENERAL.

189 . . . Appointed from among the most prominent public men in Great Britain, and usually discharging his task for a period of five years, the Governor-General occupies the most responsible, as it is the most picturesque and distinguished, office in the overseas service of the British Crown. For, while his activities comprise all the social and benevolent obligations of the Governor-General in the

'Most responsible, picturesque and disinguished office'

self-governing Dominions, there rests upon the Governor-General of India a direct personal share in the main burden of government, such as pertains to no other representative of the Sovereign within the Empire. Formerly, the Governor-General could not leave India during his term of office. By an amendment of the Statute, made in 1924, he may now be granted leave of absence once, but not more than once, and (unless special reasons require it) for not more than four months.

Leave of absence

Powers and Responsibilities.

190 Normally carrying out his functions with the guidance and concurrence of the Members of his Executive Council, and subject to the very critical observation of a popularly-elected Legislature representing about 250 millions of people, he can, in cases of emergency and stress, completely override that Council and disregard the most fully considered expression of opinion of that Legislature.

Governor-General can "completely override" Executive Council and "disregard" the opinion of the Legislature.

Thus, if in any matter his judgement is that the safety, tranquillity and interests of British India, or any part thereof, are essentially affected, he may reject the advice of his Council, and thereupon the decision of the Government of India, whether for action or inaction, is the decision of the Viceroy himself The rules for the transaction of Council business, the allocation of portfolios among its Members, and the limitation of their scope, are entirely subject to his final decision. Similarly, in the case of the Indian Legislature, the Governor-General can dissolve either Chamber or, if in special circumstances he thinks fit, can extend its life. He can insist on the passing of legislation rejected by either or both Chambers by certifying that such passage is 'essential for the safety, tranquillity or interests of British India or any part thereof'. And while he may, with the assent of his Council, restore grants refused by the Assembly, he can on his sole initiative authorize such expenditure as he thinks to be necessary for the safety or tranquillity of

Relations with Executive Council

Relations with Central Legislature

Finance and Legislation

British India or any part thereof. He may withhold his assent to any Bill, central or provincial, or reserve such Bill for His Majesty's pleasure. He has, in addition, powers in an emergency, without consulting the Legislature, to legislate by ordinance having effect for not more than six months.

The previous sanction of the Governor-General is required for the introduction of certain classes of Bills, both in the Central and Provincial Legislatures. It is for him to decide what items of Central expenditure fall within the non-votable categories. On him, too, falls the duty of nominating a number of official and non-official Members to the Central Legislature.

"Course of Indian politics is profoundly affected by his personality and influence".

191 These are the principal legal powers residing in the Governor-General, but no mere list of powers can convey the full importance of his office or the range of his individual authority. The course of Indian politics is profoundly affected by his personality and influence By the use of interviews and conversations and by his constant personal intervention many a political crisis is averted, and resort to his legal prerogatives is often thereby made unnecessary Only four times since the Reforms has the Viceroy's power of certification been made use of, and never yet has the premature dissolution of the Indian Legislature been required Very few days pass without visits by leading men in public life to the Governor-General, and every grave political event comes under his notice and study. He takes occasional opportunities of laying his views before the Central Legislature by direct address.

Influence on Provincial Governors

Furthermore, he is in constant communication with the Governors of Provinces, and no new policy of any importance is ever embarked upon by them without their consultation with, and the general concurrence of, the Governor-General.

Viceroy's Relations with Indian Princes

192. To the wide range of political responsibilities resting on the Governor-General's shoulders in

connexion with the governing of British India is added the direct personal charge of the relations of India with foreign countries, and of British India with the various Indian States. It is a proof of the confidence felt in the Governor-General's office that the Indian Princes should so strongly desire (as stated before the Butler Committee) to be placed in direct relationship with the Governor-General himself rather than, as hitherto, with the Governor-General in Council. Even now, all decisions of importance in connexion with the Indian States, though issued in the name of the Government of India, are really a special concern of the Viceroy. And though under normal conditions there is no interference by the Government of India in the internal affairs of the Indian States, yet in cases of grave misgovernment or internal political trouble, when need for interference by the Suzerain Power occasionally arises, it is upon the Governor-General himself that the actual responsibility rests for initiating and carrying through such action as may be required. The Viceroy is the link between British India and the Indian Princes; in this connexion ceremonial visits and personal interviews take up much of his time; and at the annual session of the Chamber of Princes it falls to him to preside.

'Direct personal charge' of Foreign and Political Departments

Relations with Princely States

'Interference by Suzerain Power'

His responsibility to the Secretary of State

193. The Governor-General is at all times in intimate relation and consultation with the Secretary of State for India, keeping him fully informed of Indian events through regular correspondence both by letter and cable. And apart from this personal correspondence and the relationship which it marks, section 33 of the Government of India Act requires the Governor-General in Council to pay due obedience to all such orders as he may receive from the Secretary of State, and thus, by the exercise of the powers of control over Indian finance, legislation and administration inherent in the Secretary of State, the supervision of the British Parliament over Indian affairs is secured

Supervision of Parliament through Secretary of State

24. SIMON COMMISSION ON GOVERNOR-GENERAL'S EXECUTIVE COUNCIL.

President and Vice-President of Executive Council

188. At meetings of the Governor-General's Council, if the Governor-General himself is present, he presides. In his absence, his place is taken by the Member of his Executive Council whom he has appointed to be its Vice-President. At any meeting of his Council the Governor-General, or other person presiding, and one other Member (not being the Commander-in-Chief) form a quorum sufficient for the exercise of all the functions of the Government of India. All orders of the Governor-General-in-Council are signed by a Secretary to the Government of India. If a difference of opinion arises at a meeting of the Governor-General's Council, the decision of the majority is binding, and, if the Members are equally divided, the Governor-General, or other person presiding, has a second or casting vote. But if what is proposed conflicts with the view of the Governor-General as to what is essential for the safety, tranquillity, or interests of British India, he may, on his own authority and responsibility, overrule the decision, in which case any two Members of the dissentient majority may ask that the matter be reported to the Secretary of State and that the report may be accompanied by copies of any minutes made by Members of the Council.

Relations between Governor-General and Executive Council

Minor matters decided by Department

In practice, the Governor-General's Council meets at short intervals, and all the most important decisions of the Government of India are made by it There are naturally many other matters which are decided and disposed of in the different departments, which have behind them the authority of the whole Government. One of the Members of Government, who sits in the Legislative Assembly, acts as leader of the House; this duty usually falls to the lot of the Home Member.

25. SIMON COMMISSION ON CENTRAL CONTROL OVER PROVINCIAL MATTERS.

255. The separation which the Reforms effected between Central and Provincial duties in no wise affects the responsibility of the Central Government for the financial and administrative stability of India as a whole. The Provincial Governments state that the large independence of the Centre which they have acquired, has resulted in a great decrease of correspondence with Delhi and Simla. But the responsibilities of the Government of India involve that it should be kept informed of all important matters connected with the government of the whole country, even when primarily of provincial concern. The obligation to supply information to the Governor-General in Council is imposed by statute, and again more precisely by rule, on both halves of Provincial Governments. Certain Central subjects again are of such a nature as to have little meaning (so far as Governors' Provinces are concerned) apart from the administration of Provincial subjects—for instance, 'statistics' and 'all-India Services'. The proper discharge by the Centre of its responsibilities in such subjects, therefore, seems to require the power of issuing orders to both halves of Provincial Governments. But difficulties have arisen in the exercise by the Centre of its responsibilities for all-India officers serving in Transferred Departments. An essential function of the Centre, which must invade the whole provincial sphere in both its Reserved and its Transferred parts, is 'External Relations'. The adherence of the Indian Government to conventions of the League of Nations and the International Labour Office has involved obligations, financial as well as administrative, on the Provinces, principally in Transferred Departments. The Government of India has, of course, made it a practice to consult all the Provinces before undertaking such commitments. But it has neither disguised the fact that it must retain freedom to override their objections, nor admitted its obligation to consult them in all cases.

Centre's responsibility for 'the government of the whole country'

Central subjects closely connected with Provincial matters

International obligations of the Centre

Centre's responsibility prevails over restrictions on Centre's control over Provincial Transferred subjects.

The principle has here been established that the responsibility of the Centre for Central subjects prevails over the restrictions which have been placed upon its powers of control over provincial Transferred subjects.

Centre's control over Reserved half of Provincial Government is 'complete'

256. The obedience which Provincial Governments must render to the Centre is restricted only in the Transferred sphere. So far as the official part of the Provincial Governments is concerned, it is complete. Official nominated representatives of the Provincial Governments in the Central Legislature have not, as a rule, been permitted to vote against the Central Government, though certainly on one occasion, when the Government of India's policy on provincial contributions was under discussion, they have both spoken and voted against it But, in practice, the power of control possessed by the Government of India over Reserved subjects is qualified, for the reason that even in the Reserved sphere Provincial Governments must do their utmost to act in co-operation with the Legislatures. Thus the Government of India, on one occasion, asked the Government of the United Provinces to reform its jail administration; but when it appeared that the Provincial Legislature would not vote the heavy expenditure which this reform would involve, the Central Government did not proceed to the extreme of insisting that the necessary funds should be demanded from the Legislature and, if necessary, certified by the Governor.

Actual limits to Centre's control over Reserved Departments

The form in which the Government of India has couched its communications to the Provinces is invariably one of advice and suggestions, and not of command It might appear, therefore, that it paid no respect to the distinction which exists between its powers in Reserved and Transferred subjects But this is not so. The Provinces are well aware that, though they may fully represent their point of view, they must bow to the decision of the Centre in Reserved subjects. The tradition of obedience extends also to the administration of Transferred

How co-ordination is secured between Centre and Provinces

subjects; though here it might be better expressed as a readiness to fall in with the policy of the Centre, in default of strong reasons to the contrary. This is indeed the basis on which the co-ordinated government of India proceeds. The Central Government has no inspecting agency of its own It relies entirely upon its inherent authority, on the written word, and on the presumption that the Provinces will implement its policy to the full extent of their capacity.

Control in the Reserved Field

257. The control which the Centre possesses over the official part of a Provincial Government is exercised most fully and constantly in the sphere of 'law and order.' The Home Department of the Government of India controls the Central Criminal Investigation Department which depends for its information and for assistance in carrying out its duties on the Criminal Investigation Departments of the Provinces. The Home Department is . . . . charged with the general responsibility for internal affairs. It follows all political movements and notes any serious incidents. It has to watch the indications of industrial and inter-communal unrest, and endeavour to keep itself informed of seditious and revolutionary propaganda and crime. It lays down, after consultation with the Provinces, the general lines of policy which the Provincial Governments are expected to follow when such incidents occur. It frequently makes such suggestions as seem to be called for, and these the Provinces naturally accept unless they see some very clear reason to the contrary. It has, from time to time, directed prosecutions to be instituted for seditious crimes which it considered to be of all-India importance. It has called the attention of Provincial Governments to the risks attendant on reduction of their police forces, to the state of crime in a Province, to delay in the disposal of criminal cases, and to overcrowding in jails. It has issued instructions on the treatment of certain classes of persons

Law and Order

Home Department at the Centre

Its multifarious duties

in prison and on the censorship of films. In land revenue, on the other hand, the control of the Government of India has been limited to the necessities of its own interests and responsibilities. It has, as might be expected, promulgated, with the authority of the Secretary of State, rules regulating the transfer of public land and buildings between itself and the Provinces. In the purely provincial sphere, it has limited its supervision principally to securing that provincial finances should not be detrimentally affected by large alienations of land or land revenue, or wide departure from the accepted principles of assessment.

Enquiry by Centre

It appears that only in one case, when suggestions were made of inefficiency in the administration of a provincial Reserved subject, has the Government of India instituted an inquiry in exercise of its powers of superintendence, direction and control. In this instance, a Committee was appointed to inquire into the Bombay Back Bay reclamation scheme, but —it is important to add—this was done at the request of the Bombay Government, and rather with a view to securing an impartial verdict on the performance of their duties by the officials and employees of the Bombay Government, than on the policy of that Government itself.

The Co-ordinating Power of the Centre

Centre's attitude to Transferred subjects

258. The part which the Centre plays in the administration of provincial Reserved subjects is a matter of discretion and so principally of administrative working. The part which it plays in Transferred subjects is of greater constitutional interest. It will be understood, of course, that the Government of India could not interfere, and has, in fact, never attempted since the Reforms to interfere, to secure improvement in the administration of Transferred subjects—as, for instance, to promote an increase of literacy in a particularly illiterate area. The authority which it exercises is of a different nature. It is largely based on realization of the fact that

progress in any one Province may depend upon the co-operation of adjoining Provinces, and that co-ordination is best secured by Central action. There have thus taken place at Delhi and Simla conferences attended by provincial Education Ministers and Directors of Public Instruction, and provincial Excise and Agricultural Ministers, as well as by Inspectors-General of Police and Jails, and by Finance Members. This has been found a most satisfactory method of pooling experience or initiating a joint policy. It is natural for such conferences to be held under the auspices of the Central Government, and for that Government to help in the enforcement of any decisions reached.

Co-ordination by Centre for "pooling experience or initiating a joint policy" in respect of several Provinces

The co-ordinating power of the Centre, which arises naturally from its position, is well recognized in the Constitution. Among Central subjects are 'central agencies and institutions for research'. The Government of India's research institutes such as the Agricultural Institutes at Pusa and Coimbatore, the Veterinary Institute at Muktesar and the Forest Research Institute at Dehra Dun are well known and have achieved remarkable results. At first, the Provinces seem to have shown some disinclination to resign their control of research institutes to the Centre. The Bombay Government, for instance, contended that sugarcane research should be conducted by that Province, since 'agriculture, including research institutes' was a Provincial subject, but the general tendency since the Reforms has been to extend the co-ordinating power of the Centre more widely into the Transferred field than was contemplated when the Act and the Rules under it were framed. The Indian Central Cotton Committee, constituted in 1921 and given statutory powers in 1923, concerns itself with all questions arising out of cotton-growing from the field to the factory, and has been remarkably successful. Two more recent instances of this tendency may be given here. As the result of the recommendation of the Linlithgow Commission, the principle has been accepted that

Research institutes

Gradual expansion of Centre's 'co-ordinating power'

Linlithgow Commission

'It is the duty of the Government of India, in the discharge of their ultimate responsibility for the welfare of the vast agricultural population of this country, to advance research in every possible way without encroaching upon the functions of Provincial Governments in that sphere.'

Central Council of Agricultural Research

The Government of India has decided, in accordance with this principle, to constitute a central Council of Agricultural Research, consisting of a governing body and an advisory council. The provincial representatives on the governing body are the provincial Ministers for Agriculture. Again in 1927, a Committee was appointed of Members of the Central Legislature (the Indian Road Development Committee),

'to examine the desirability of developing the road system of India, the means by which such development could most suitably be financed and to consider the formation of a Central Road Board for the purpose of advising in regard to and co-ordinating the policy in respect of, road development in India.'

Road Conferences

This committee did not, in fact, advise the appointment of a Central Road Board, but recommended that road conferences, at which Provincial Governments should be respresented, should be convened periodically by the Government of India. One such conference has already been held and, in addition, a Central Standing Committee on Roads has been appointed to advise the Government of India on road matters.

Central Public Health Commission

The giving of advice to Provincial Governments is an important function of all those central offices which exist primarily to discharge some responsibility of the Central Government, such as those of the Inspector-General of Forests and the Public Health Commissioner to the Government of India. The sphere of the latter officer's duties have been defined as (1) research, (2) medical qualifications, (3) port quarantine, including all international obligations

under international conventions as regards disease, and (4) the prevention of the spread of disease over India, for instance in connexion with pilgrimages. These duties can, of course, only be discharged in conjunction with the provincial Ministers for Public Health. Again, there has recently been created a Central Board of Irrigation, which consists of the provincial Chief Engineers and the Consulting Engineer to the Government of India. It has advised the Government of India on those important irrigation projects which are submitted by the Provinces for the sanction of the Secretary of State, and upon the rival claims by the Governments of Bombay and the Punjab to the waters of the Indus for irrigation purposes. It is also available to advise the Provincial and Central Governments generally on other irrigation matters.

Central Board of Irrigation

The co-ordinating power secured to the Central Government by the device by which certain provincial matters are made subject to Central legislation, covers a wide category of provincial activities, including (among others) the borrowing and taxing powers of local self-governing bodies, factories, labour questions, infectious and contagious diseases of man, cattle and plants, and standards of weights and measures. Legislation in these subjects has, in practice, been central rather than provincial. The enactments regulating industrial matters which the Central Legislature has passed since the Reforms—a new Indian Factories Act, a Trades Union Act and a Workmen's Compensation Act, for instance—form a large and comprehensive body of law. Thus, while the administration and enforcement of these enactments is wholly provincial, their working is watched by the Central Government, which keeps itself informed by the continual exchange of communications, by conferences and by tours which the Members of the Government of India and their technical experts make throughout the Provinces.

Some Provincial matters are made subject to Central legislation.

Financial Control by the Centre

259. . . . In finance, as in administration, the Reforms effected a formal distribution of interests between the Provinces and the Government of India. But, in this subject of finance, exercise by the Centre of its powers of superintendence, direction and control, and of interpretation and adjustment, offered a ground for greater conflict of interests than in general administration. A decision made in favour of one Province, as when Bengal was granted the remission of its provincial contribution, was regarded as inequitable by other Provinces. An interpretation which went against a Province was sometimes regarded by that Province as an interested decision, if its effect was to benefit Central revenues. The general unpopularity of the Meston settlement and the financial stringency of the early days of the Reforms detrimentally affected the relationships of some of the Provinces with the Government of India. In certain cases, ingenuity was exercised in making claims against the Centre for services rendered, attempts were made to strain the natural classification of receipts and expenditure as central or provincial, and provincial interests were somewhat narrowly pursued without proper regard to the requirements of India as a whole. But difficulties of interpretation have now mostly been settled and major matters of dispute adjusted, with the result that unprofitable disputes are now uncommon. The most effective means of reaching harmony on broad principles has been found to be through conferences of Finance Members, which are now held annually.

Conflict of interests between (1) Centre and States, (2) between different States

The Control of Provincial Legislation

Ordinances issued by Governor-General

260. The Governor-General's powers of issuing Ordinances in emergencies for any part of India have not lain dormant. The exercise of this power to meet an emergency such as the Moplah rebellion, has been accepted by popular opinion as necessary. But in one case at any rate—when the Bengal Criminal Law Amendment Ordinance was issued in

1924—it was sharply criticized in the Central Legislature. The exercise of the Governor-General's powers of assent, dissent and reservation has given rise to no difficulties, but criticism has been directed in the Provinces at the wide terms in which are drawn the provisions imposing the obligation of obtaining the Governor-General's previous sanction to all but a small category of provincial enactments . . . the Governor-General's discretionary powers take the place in the Constitution of any formal distribution of legislative powers between the Centre and the Provinces. They have served their purpose well. If the Provinces have been prevented from invading the proper sphere of the Centre, they have also been protected from many attempts at interference in provincial matters by way of private Members' Bills in the Central Legislature. But the procedure involves that not only provincial Bills, but amendments to provincial Bills, should be submitted for previous sanction, and, if subsequent delay is to be avoided, it is to the interest of the working of the Provincial Legislatures to give the widest possible interpretation to these provisions.

Governor-General's control over Provincial legislation

26. SIMON COMMISSION ON WORKING OF DYARCHY.

161. We shall, in the next part of our Report, discuss the actual working of the dyarchic system, the structure of which we have here endeavoured to describe, and one of the most important and difficult questions that will arise will be the extent to which the system has led to the adoption, as a constitutional principle, of the joint responsibility of Ministers. The intention of the authors of the Montagu-Chelmsford Report on the point is not, perhaps, very easy to ascertain. That document, in describing the working of the proposed Executive, stated that "the actual decision on a transferred subject would be taken, after general discussion, by the Governor and his Ministers", so that, after whatever meeting there may have been of the Government as a whole, "the

Question of joint responsibility of Ministers

Interpretation of Mont-Ford Report

decision would be left", as we have stated, to the part of the Government responsible for the particular subject involved". It is evident, therefore, that it was not intended that one-half of the executive was to be held responsible for the decisions of the other, but what is not so clear is whether, within the ambit of the transferred half, it was intended that Ministers should act jointly and stand or fall together. When the Government of India Bill was introduced into the House of Commons and read a second time, it provided that the Governor of a Province, in relation to a transferred subject, should be "guided by the advice of the Minister in charge of the subject". The effect would have been that another Minister would have had no responsibility for what his colleague advised. But the Joint Select Committee took the view that the principle of collective responsibility of Ministers should be established from the start, and consequently recommended that this should appear on the face of the Bill. The language of the clause [now section 52(3)] was, therefore, altered, so that it reads "in relation to transferred subjects, the Governor shall be guided by the advice of his Ministers"—phraseology which, standing by itself, is still somewhat ambiguous, though having regard to the history of the matter there is no doubt of the object in view. It seems unfortunate that the terms of para VI of the Instrument of Instructions to Governors afford some support to a different interpretation:

View of Joint Select Committee

Language of the Act of 1919

Instrument of Instructions to Governors

"In considering a Minister's advice and deciding whether or not there is sufficient cause in any case to dissent from his opinion, you shall have due regard to his relations with the legislative council and to the wishes of the people of the presidency as expressed by their representatives therein."

Joint ministerial responsibility is, of course, with us a constitutional convention of old standing and we are so accustomed to it that we should think it strange for an individual Minister to be able to conduct his department without involving his colleagues in responsibility for the policy pursued. But joint respon-

sibility is an extremely difficult thing to put into the text of an Act of Parliament, especially when it was, in any case, not intended that ministerial responsibility should extend over the whole field of administration. And we dwell upon the point now because it is very necessary to appreciate the complexities of the administrative structure which was called into being in the Governors' provinces nine years ago, before attempting the still more difficult task of expressing a judgment as to how it has worked.

Difficulty of enforcing joint ministerial responsibility in Provinces

232. The theory of the reformed constitution is that Ministers, without being answerable for the reserved departments or for policy associated with the reserved side, are jointly responsible to the elected legislature in respect of the transferred half of Government. But it seems to us that it has proved impossible to translate this theory into practice. Difficulties in the sphere of law and order led at one time in the United Provinces to a quite definite swing-back from the method of unified consultation[1], and the then Governor sought to make the practice regulating the taking of decisions by the dyarchic Government strictly conform with the constitutional theory. But it is not clear that any greater success was obtained in this instance in establishing in the

Working of the principle of joint ministerial responsibility

[1] "The second matter on which people began to lose faith in dyarchy was the unwillingness of Governors to take the Indian Ministers into their confidence in the disposal of serious and grave administrative questions and in the initiation of new policies. The joint deliberation of such questions in a united Cabinet. . . .hardly ever materialized in any province and was honoured more in the breach than in the observance. In Bengal, when new repressive measures were enforced, the Indian Ministers of the Crown were hardly ever consulted. In Bengal during the height of the non-co-operation movement, when hundreds of young students were arrested under the Criminal Law Amendment Act, and even when Srimati Basanti Devi (C. R. Das's wife) and some of her women compatriots were arrested in Calcutta in December, 1921, for hawking *Khaddar*, the Indian Ministers were kept in complete ignorance of these official designs."—P. C. Ray, *Life and Times of C. R. Das*, pp. 185-186.

Case of Bengal

eyes of the public the principle of the responsibility of Ministers to the legislature.

Harmonious working of Dyarchy rendered difficult by the attitude of the Legislature and the public

The intention of dyarchy was to establish, within a certain definite range, responsibility to an elected legislature. If this intention is not carried out, the justification for the constitutional bifurcation and for all the complications which it brings in its train is difficult to find. In the light of experience, it may be doubted whether the object aimed at could be attained as long as both halves of Government have to present themselves before the same legislature. The practical difficulty in the way of achieving the objective of dyarchy and of obtaining a clear demarcation of responsibility arises not so much in the inner counsels of Government as in the eyes of the legislature, the electorate, and the public.

'Two different functions' of Provincial Legislature

233. Provincial legislatures were by the nature of the constitution set the difficult task of discharging two different functions at the same time. In one sphere, they were to exercise control over policy; in the other, while free to criticise and vote or withhold supply, they were to have no responsibility. The inherent difficulty of keeping this distinction in mind has been intensified by the circumstances under which the councils have worked to such an extent that perhaps the most important feature of the working of dyarchy in the provincial councils, when looked at from the constitutional aspect, is the marked tendency of the councils to regard the Government as a whole, to think of Ministers as on a footing not very different from that of Executive Councillors, to forget the extent of opportunities of the legislatures on the transferred side and to magnify their functions in the reserved field.

234. The Joint Select Committee's view of the relationship between Members and Ministers in the Legislature was as follows:—

"Members of the executive council and Ministers should not oppose each other by speech or vote; members of the executive council should not be re-

quired to support by speech or vote proposals of Ministers of which they do not approve, nor should Ministers be required to support by speech or vote proposals of the executive council of which they do not approve; they should be free to speak and vote for each other's proposals when they are in agreement with them."

Joint Select Committee on relations between Ministers and Members of Executive Council

The temperature of Indian politics is seldom so tepid as to make such detachment practicable. Ministers who are not for the Government policy are naturally regarded as against it We learnt that in the fastness of Shillong it was possible for Ministers with considerable frequency to abstain from supporting the policy of the Governor in Council without untoward results. This was rarely so elsewhere. Members and Ministers were in too great need of mutual support. It is true, nevertheless, that a few instances did occur (mainly in the United Provinces) of members actually voting against Ministers and Ministers against members.

'Detachment' recommended by Joint Select Committee not 'practicable'

Difficulties produced by Working of Dyarchy.

235. We have already mentioned the rarity of an assured elected majority in support of Ministers. The effect produced has been profound. It is largely psychological and deserves careful analysis. Ministers are seen to be, and feel themselves to be largely dependent on the official bloc; they are necessarily in close relation with the reserved side of Government; and it has not infrequently happened that a Minister is subsequently appointed to be an Executive Councillor. All this helps to create a feeling that, when an elected member is appointed a Minister, he becomes a "Government man", and Ministers themselves have seldom altogether escaped the effect of the instinctive opposition which is aroused by their association with "Government," with the result that the ties between them and their supporters are

Ministers dependent on votes of official and nominated members

Ministers become 'Government men.'

weakened[1]. It is far from being the case that the appointment of a leader of a group to ministerial office has increased his authority with his former followers.

Administration of 'Reserved' subjects influenced by Ministers and their followers

There have also been reactions on the reserved side of Government. Ministers, who owe so much to the support of the official bloc, endeavour to obtain for the reserved side of Government the vote of elected members with whom they are specially associated, though they do not invariably succeed. It is, of course, important that this support should be given to the reserved side, for otherwise it may find itself in a minority, and the Governor in Council is naturally unwilling to invoke, save as a last resort, special powers of restoration and certification. But this situation involves the consequence that the reserved side of Government may be much influenced by Ministers and their following. Decisions to be reached by the Governor in Council are affected by calculations of the probable attitude of ministerial supporters. The stronger the following of Ministers, the greater their influence on the reserved side, and the theoretical distinctions involved in the idea of dyarchy are likely to be blurred in practice. Thus the two halves of Government have been thrown into each other's arms through their relations with the legislature, no less than by the impossibility of conducting the administration in compartments. The resulting almost irresistible impulse towards a unification of Government has probably been all to the good from

'Distinctions involved in the idea of dyarchy blurred in practice'

[1] The following criticism of the conduct of Sir Surendra Nath Banerjee as a Minister comes from the pen of a well-informed publicist: "During years of his office as Minister, Sir Surendra Nath had gone back on the dearest principles of his earlier public life and almost uniformly supported the bureaucracy, of which he was once the greatest enemy and unsparing critic. . . . .In these three years the intoxicating fumes of power and authority had made a complete wreck of the erstwhile tribune of the people. Under the spell of office, he supported the white rulers in flouting public opinion all along the line and in suppressing the popular will and popular aspirations in all crucial questions."—P. C. Ray, *Life and Times of C. R. Das*, p. 186.

the point of view of the efficient conduct of business; but the underlying and fundamental conception of the dyarchic system—complete "responsibility" of Ministers in a certain defined field, and in that field only—has become almost hopelessly obscured.

Difference in the attitude of Councils towards Ministers and Executive Councillors

It would, of course, be an exaggeration to say that there was no difference in the attitude of the councils towards Ministers and Executive Councillors There has usually been distinctly less opposition to ministerial measures and to demands for grants on the transferred side, but this has probably been largely due to the nature of the subjects assigned to each. The unpopular tasks of Government are left to be discharged by its official members. Police or land revenue administration are not subjects likely to arouse enthusiasm and often involve measures of great unpopularity; while for education, for health administration, and for other departments in the hands of Ministers, to which the term "Nation-building" is so frequently attached, there is a very real keenness.

27. RECOMMENDATIONS OF NEHRU COMMITTEE, 1928.

[In accordance with a resolution of the Madras session of the Congress (1927) an All-Parties Conference was summoned at Delhi in February and March, 1928, and it was agreed between the Congress and other organisations present that the question of a constitution for India should be discussed on the basis of full responsible government. In May, 1928, the Conference appointed a Committee, with Pandit Motilal Nehru as President, to draft the principles of a constitution before the 1st July next The *Report* of the Nehru Committee was well-received, although it laid down Dominion Status, not complete independence, as India's political objectives. The Calcutta Congress adopted the following resolution .—

Congress resolution on Nehru Committee recommendations

"This Congress, having considered the constitution recommended by the All-Parties Committee Report, welcomes it as a great contribution towards the solution of India's political and communal problems and congratulates the committee on the virtual unanimity of its recommendations, and, whilst adhering to the resolution relating to complete independence passed at the Madras Congress, approves of the

constitution drawn up by the Committee as a great step in political advance, specially as it represents the largest measure of agreement attained among the important parties in the country.

Subject to the exigencies of the political situation, this Congress will adopt the constitution if it is accepted in its entirety by the British Parliament on or before the 31st December, 1929, but in the event of its non-acceptance by the date or its earlier rejection the Congress will organise a campaign of non-violent Non-co-operation. . . ."]

Constitutional Status of India.

Dominion Status

1 India shall have the same constitutional status in the comity of nations known as the British Empire, as the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa and the Irish Free State[1], with a Parliament having powers to make laws for the peace, order and good government of India, and an Executive responsible to that Parliament, and shall be styled and known as the Commonwealth of India

Fundamental Rights.

Source of authority —people

4. (i) All powers of government and all authority, legislative, executive and judicial, are derived from the people and the same shall be exercised in the Commonwealth of India through the organisations established by or under, and in accord with, this constitution.

Why Dominion Status was accepted instead of independence

[1] "The Committee, although a small one, consists of members belonging to different political schools and to different political groups. . . .There were two formidable difficulties in the way of complete or even substantial unanimity. The first arose from the difference in the general outlook of the Congress and that of the other organisations, the former having at its last session adopted a resolution declaring independence as its goal and the latter aiming at dominion status . . .Some members of the Committee desired to adhere to the position taken up at Delhi, but a majority was of opinion that a choice had to be made. This choice, in view of the circumstances mentioned above, with so many different parties co-operating, could only be one—dominion status On any higher ground a general agreement was not obtainable."—*Nehru Report,* p. 24.

(*ix*) There shall be no state religion for the Commonwealth of India or for any province in the Commonwealth, nor shall the state either directly or indirectly endow any religion or give any preference or impose any disability on account of religious belief or religious status. No State Religion

(*xix*) Men and women shall have equal rights as citizens.

Parliament.

5. The legislative power of the Commonwealth shall be vested in a Parliament which shall consist of the King, a Senate and a House of Representatives herein called the Parliament. Composition of Parliament

6. The Governor-General shall be appointed by the King and shall have, and may exercise in the Commonwealth, during the King's pleasure, but subject to this constitution, such powers and functions of the King as His Majesty may assign to him. Governor-General

* * * *

8. The Senate shall consist of 200 members to be elected by the Provincial Councils, a specific number of seats being allotted to each province on the basis of population, subject to a minimum. The election shall be held by the method of proportional representation with the single transferable vote. (The Hare system). Senate

9. The House of Representatives shall consist of 500 members to be elected by constituencies determined by law. Every person of either sex, who has attained the age of 21, and is not disqualified by law, shall be entitled to vote. House of Representatives

13. Parliament shall, subject to the provisions of this constitution, have power to make laws

(*a*) for the peace, order and good government of the Commonwealth in relation to all matters Jurisdiction of Parliament

not coming in the classes of subjects by this Act assigned to the legislatures of provinces;

(*b*) for the nationals and servants of the Commonwealth within other parts of India as well as those without and beyond India;

(*c*) for the Government officers, soldiers, airmen and followers in His Majesty's Indian forces, wherever they are serving, in so far as they are not subject to the Army Act or the Air Force Act; and

(*d*) for all persons employed or serving in or belonging to the Royal Indian Marine Service or the Indian Navy.

* * * *

Foreign affairs

14. The powers of Parliament with respect to foreign affairs, not including the Indian States, shall be the same as exercised by the self-governing dominions.

* * * *

22. The executive power of the Commonwealth is vested in the King and is exercisable by the Governor-General as the King's representative, subject to the provisions of this Act and of the laws of the Commonwealth.

Central Executive Council

23. (*a*) There shall be an Executive Council consisting of the Prime Minister and, until Parliament otherwise provides, not more than six Ministers of the Commonwealth.

(*b*) The Prime Minister shall be appointed by the Governor-General and the Ministers shall also be appointed by him on the advice of the Prime Minister.

(*c*) The Executive Council shall be collectively responsible to the legislature for all matters concerning the departments of the Commonwealth administered by members of the Executive Council.

* * * *

High Commissioner and Foreign Representatives.

Foreign affairs

26. The Commonwealth shall have the power to appoint High Commissioners and other foreign re-

presentatives similar to that exercised by Canada and other dominions. . . .

The Provincial Legislature.

28. The legislative power of a province shall be vested in the King and the local Legislative Council.

29. There shall be a Governor of every province who shall be appointed by the King and represent His Majesty in the province. Governor

* * * *

31. (i) There shall be one member of the Provincial Legislative Council for every 100,000 of the population of the said province. . . . Provincial Legislature

(ii) . . . Every person of either sex who has attained the age of 21 and is not disqualified by law shall be entitled to vote.

The Provincial Executive.

43. The executive power of the province shall be vested in the Governor acting on the advice of the provincial Executive Council. Provincial Executive Council

44. There shall be an Executive Council for every province consisting of not more than five Ministers appointed by the Governor.

45. In appointing the Executive Council the Governor shall select the Chief Minister and appoint others only on his advice.

The Judiciary.

46. There shall be a Supreme Court which shall exercise such jurisdiction as Parliament shall determine. Supreme Court

49. The Supreme Court shall have original jurisdiction in all matters—

(*i*) referred to the Supreme Court by the Governor-General-in-Council under Section 85; Jurisdiction of Supreme Court

(*ii*) in which the Commonwealth, or person suing or being sued on behalf of the Commonwealth, is a party;

(*iii*) affecting consuls or other representatives of other countries;

(*iv*) between provinces;

(*v*) arising under this constitution or involving its interpretation.

* * * *

Indian States.

Relations between Common-wealth and States

85. The Commonwealth shall exercise the same rights in relation to, and discharge the same obligations towards, the Indian States, arising out of treaties or otherwise, as the Government of India has hitherto exercised and discharged.

In case of any difference between the Commonwealth and any Indian State on any matter arising out of treaties, engagements, sanads, or similar other documents, the Governor-General-in-Council may, with the consent of the State concerned, refer the said matter to the Supreme Court for its decision.

Amendment of the Constitution.

87. Parliament may, by law, repeal or alter any of the provisions of the constitution. . . .

Communal Representation.

I. There shall be joint mixed electorates throughout India for the House of Representatives and the provincial legislatures.

Central Legislature

II. There shall be no reservation of seats for the House of Representatives except for Muslims in provinces where they are in a minority and non-Muslims in the N.W.F. Province. Such reservation will be in strict proportion to the . . . population . . . The Muslims or non-Muslims, where reservation is allowed to them, shall have the right to contest additional seats.

III. In the provinces

(a) there shall be no reservation of seats for any community in Punjab and Bengal;

(b) in provinces other than the Punjab and Bengal there will be reservation of seats for Muslim minorities on population basis with the right to contest additional seats; Provincial Legislatures

(c) in the N.W.F. Province there shall be similar reservation of seats for non-Muslims with the right to contest other seats.

IV. Reservation of seats, where allowed, shall be for a fixed period of ten years.

28. LORD IRWIN ON DOUBLE DUTY OF MODERN VICEROYS[1], 1929.

Viceroy as (i) guardian of law and order

Whoever holds the position of Viceroy and Governor-General of India is bound through his office and conscience by a double duty. He is under the plain obligation of seeing that the King's Government in India is carried on, with due respect for the law . . . But in another and not less important capacity the Viceroy stands as intermediary between India and Great Britain, and as such will constantly endeavour to interpret as faithfully as he may the hopes, the feelings, the desires of the Indian people to those who may from time to time compose His Majesty's Government in Great Britain. If I may quote words which are used in connection with another office in the British constitution, he will "beg His Majesty's Government ever to place the most favourable construction upon all their proceedings".

(ii) intermediary between India and England

29. LORD IRWIN ON POLITICAL GOAL OF INDIA.

I. Address to European Association, Calcutta, December, 1928.

You . . . have referred to the movement recently undertaken in certain quarters in India on behalf of

[1] Address to the Legislative Assembly, January, 1929.

Demand for 'complete and total independence' of India

This demand is damaging to India.

the policy of complete and total independence, and I notice that it has been officially asserted by a recognised political organisation that India can enjoy no liberty unless and until the British connexion is entirely severed . . . I make bold to say that the most bitter and confirmed reactionary would never have it in his power to inflict one-tenth of the damage upon India's cause that it is likely to suffer at the hands of its false friends, who would guide it towards the morass of independence.

Factors of unity in India

If it is necessary, as it clearly is, for India to raise her national life on a foundation of true national unity, what greater disservice can any persons render to her than by bending all their energies to destroy that which is to-day the principal factor of unity throughout the Indian Peninsula? Of the unifying influences that make for nationhood, I make bold to say that the most important in the life of India to-day, viewed as a single entity throughout the whole wide extent and variety of what her name comprises, are these: First, she is a geographic unit, all parts of which it may be said share a broad economic interest. Secondly, and more powerful, is the common loyalty to the Person and Throne of the King-Emperor . . . Destroy that, and you have, by violating the most cherished sentiment of millions, erected an enduring and insuperable barrier to the achievement of a free Indian nationhood.

Demand for independence will alienate British opinion

It is not difficult to forecast what must be the reaction upon British opinion of this assertion of independence as the goal of a great political party by persons who would claim the title of responsible politicians. Those in Great Britain who sympathise most warmly with the ideal of India attaining at the earliest possible moment the status of any of the other great Dominions of the Crown, will find the ground cut from their feet if British opinion ever becomes convinced, as some apparently are now endeavouring to convince it, that so-called Dominion Status was only valued by India as a stepping-stone to a complete severance of her connexion with the British Commonwealth.

From the point of view, therefore, alike of its effect upon Indian unity and public opinion of Great Britain, I can feel no doubt that the demand for independence must do an irreparable injury to India's cause. . . . .

II. Declaration, October 31, 1929.

The goal of British policy was stated in the declaration of August 1917 to be that of providing for the gradual development of self-governing institutions, with a view to the progressive realization of responsible government in India as an integral part of the British Empire . . . my own Instrument of Instructions from the King-Emperor expressly states that it is His Majesty's will and pleasure that the plans laid by Parliament in 1919 should be the means by which British India may attain its due place among His Dominions. Ministers of the Crown, moreover, have more than once publicly declared that it is the desire of the British Government that India should, in the fullness of time, take her place in the Empire in equal partnership with the Dominions. But in view of the doubts which have been expressed both in Great Britain and in India regarding the interpretation to be placed on the intentions of the British Government[1] in enacting the statute of 1919, I am authorised on behalf of His Majesty's Government to state clearly that, in their judgment, it is implicit in the Declaration of 1917 that the

Declaration of 1917

Instrument of Instructions

Interpretation of Declaration of 1917

[1] Sir Malcolm Hailey, Home Member of the Government of India, drew a distinction between responsible government and Dominion Status in a speech delivered in the Indian Legislative Assembly on February 8, 1924. (See p. 161). The Nehru Report observes, "This speech may be taken to be the beginning of a new current of thought in official circles in India, and we find that it has ever since been re-echoed in the speeches of some British statesmen and the writings of publicists in the British press, and in books that have been brought out by retired English members of the bureaucracy in India. Sir Malcolm Hailey's arguments and the implications of his arguments were at once repudiated by the members of the Legislative Assembly and by Indian public opinion outside the Assembly."

Hailey's interpretation of Declaration of 1917

Comments of Nehru Committee on Hailey's interpretation

natural issue of India's constitutional progress, as there contemplated, is the attainment of Dominion Status.[1]

III. Address to Legislative Assembly, January, 1930.

'Three salient points':

(1) Goal of British policy

(2) Problem of States

(3) Round Table Conference

The intention of my statement was to focus attention on three salient points. First, while saying that obviously no British Government could prejudge the policy which it would recommend to Parliament after the report of the Statutory Commission had been considered, it re-stated in unequivocal terms the goal to which British policy in regard to India was directed. Secondly, it emphasised Sir John Simon's assertion that the facts of the situation compel us to make a constructive attempt to face the problem of the Indian States, with due regard to the treaties which regulate their relations with the British Crown[2]; thirdly, it intimated the intention of His Majesty's Government to convene a Conference on these matters before they themselves prejudged them by formulation of even draft conclusions.

What is Dominion Status?

[1] Great Britain and the Dominions (Canada, Australia, South Africa, New Zealand, Eire) "are autonomous communities within the British Empire, equal in status, in no way subordinate one to another in any aspect of their domestic or external affairs, though united by a common allegiance to the Crown, and freely associated as members of the British Commonwealth of Nations."—*Resolution of the Imperial Conference*, 1926

Lord Irwin on Indian States

[2] Addressing the Chamber of Princes in November, 1926, Lord Irwin said: ". . . .I realise to the full the sanctity and binding nature of the treaties, and. . . .I shall do all in my power to observe them. . . . .The general policy of Government remains, as it has been in the past, a policy of non-interference in affairs that are internal to the States. It is only in extreme cases that the Paramount Power will intervene, and. . . .any such action which it is ever thought necessary to take will be taken only after the most deliberate and sympathetic consideration, and with the greatest reluctance. Its sole purpose will be the furtherance of the interest, present and future, of the Indian States, and of the general Order of the Princes themselves."

I have never sought to delude Indian opinion into the belief that a definition of purpose, however plainly stated, would of itself, by the enunciation of a phrase, provide a solution for the problems which have to be solved before that purpose is fully realised. The assertion of a goal is of necessity a different thing from the goal's attainment. No sensible traveller would feel that the clear definition of his destination was the same thing as the completion of his journey. But it is an assurance of direction, and in this case I believe it to be something of tangible value to India that those who demand full equality with the other self-governing units of the British Commonwealth on her behalf should know that Great Britain on her side also desires to lend her assistance to India in attaining to that position. The desire of most responsible opinion in India and that of His Majesty's Government is thus the same...

Assertion of goal is different from attainment of goal.

Although it is true that in her external relations with other parts of the Empire, India exhibits already several of the attributes of a self-governing Dominion, it is also true that Indian political opinion is not at present disposed to attach full value to these attributes of status, for the reason that their practical exercise is for the most part subject to the control or concurrence of His Majesty's Government. The demand for Dominion Status is based upon the general claim to be free from that control, more especially in those fields that are regarded as of predominantly domestic interest.

"India already exhibits several attributes of a self-governing Dominion".

30. INDIAN NATIONAL CONGRESS AND GOAL OF INDEPENDENCE.

I. Mahatma Gandhi's Speech, Nagpur Congress, 1920.

The resolution which I have the honour to move is as follows: "The object of the Indian National Congress is the attainment of Swarajya by the people of India by all legitimate and peaceful means".

'Attainment of Swarajya'

There are only two kinds of objections. . . .that will be advanced from this platform. One is that we may not to-day think of dissolving the British connection. What I say is that it is derogatory to national dignity to think of the permanence of British connection at any cost. . . .I do not, for one moment, suggest that we want to end the connection at all costs, unconditionally. If the British connection is for the advancement of India, we do not want to destroy it. But if it is inconsistent with our national self-respect, then it is our bounden duty to destroy it. There is room in this resolution for both—those who believe that, by retaining British connection, we can purify ourselves and purify British people, and those who have no belief.

Permanence of British connection —derogatory to national self-respect

II. Presidential Address of Mahatma Gandhi, Belgaum Congress, 1924.

The above sketch presupposes the retention of the British connection on perfectly honourable and absolutely equal terms. But I know that there is a section among Congressmen who want under every conceivable circumstance complete independence of Britain. They will not have even an equal partnership. In my opinion if the British Government mean what they say and honestly help us to equality, it would be a greater triumph than a complete severance of the British connection. I would therefore strive for Swaraj within the Empire but would not hesitate to sever all connection, if severance became a necessity through Britain's own fault. I would thus throw the burden of separation on the British people. The better mind of the world desires to-day not absolutely independent states warring one against another but a federation of friendly interdependent states. The consummation of that event may be far off. I want to make no grand claim for our country. But I see nothing grand or impossible about our expressing our readiness for universal interdependence rather than independence. It should rest with Britain to say that she will have no real alliance

'Swaraj within the Empire'

with India. I desire the ability to be totally independent without asserting the independence. Any scheme that I would frame, while Britain declares her goal about India to be complete equality within the Empire, would be that of alliance and not of independence without alliance. I would urge every Congressman not to be insistent on independence in each and every case, not because there is anything impossible about it, but because it is wholly unnecessary till it has become perfectly manifest that Britain really means subjugation in spite of her declaration to the contrary.

Wanted—'ability to be totally independent without asserting the independence'

III. Resolution of Congress, Madras Session, 1927.

This Congress declares the goal of the Indian people to be Complete National Independence.

'Complete independence'

IV. Resolution of All-India Congress Committee, Delhi Session, 1928.

This meeting of the A. I. C. C. adheres to the decision of the Madras Congress declaring complete independence to be the goal of the Indian people and is of opinion that there can be no true freedom till the British connection is severed.

'No true freedom till British connection is severed'

V. Presidential Address of Motilal Nehru, Calcutta Congress, 1928.

What is our destination?

My answer straight and simple is freedom in substance, and not merely in form, by whatever name you call it. The Madras Congress has declared the goal as complete independence. The All-Parties' Committee has recommended Dominion Status. I have explained my position more than once but with your permission I shall re-state it here as clearly as I can. To put it in a nutshell it comes to this: I am for complete independence—as complete as it can be—but I am not against full Dominion Status—as full as any Dominion possesses it to-day, provided I

'Freedom in substance'

'Not against full Dominion Status'

get it before it loses all attraction. I am for severance of British connection as it subsists with us to-day but am not against it as it exists with the Dominions.

Can we get, and keep freedom?

Let me explain. National freedom unrestricted and unqualified is the natural craving of the human soul. I do not believe that there is a single Indian, be he or she a member of a party or group, or one completely detached from all parties and groups, who does not love freedom and will not have it. Differences arise only when the question is raised whether it is possible to have and to keep freedom; and it is then that we find opinion sharply divided. There are those who have the faith in them and in their countrymen to answer the question by an emphatic "yes"—and I may at once say that I am one of them. But there are also those who will shake their heads, some from conviction and others in doubt. Complete independence is the goal of the former, Dominion Status that of the latter. I will not undertake a fruitless enquiry into the relation or want of relation between independence and Dominion Status. It does not matter to me whether theoretically they belong to the same or different stocks, or whether one is or is not the negation of the other. What matters to me is that Dominion Status involves a very considerable measure of freedom bordering on complete independence. I am therefore not against an exchange of our object independence with whatever measure of freedom there is in full Dominion Status if such exchange is offered. But I cannot make Dominion Status my goal as it has to come from another party over whom I have no control.

Struggle will bring freedom.

The only way I can acquire such control is by working in right earnest for complete independence. I say 'in right earnest' because I know mere bluff will not take me far; it is only when complete independence is in sight that the party in power will be inclined to negotiate for something less. Empty bluff will not carry us to that stage. Solid work and ungrudging sacrifice alone will do it. When that

work is done, and sacrifice made, the party having the whip hand will dictate. Whether it is to be Dominion Status or complete independence will depend upon whether the conditions then prevailing are similar to those of Ireland or to those of the United States of America at the time when each came into what she now has. Meanwhile, there is nothing before us but a protracted life-and-death struggle on the one side, and continued repression relieved by an occasional dose of undiluted oppression on the other. It follows therefore that whatever the ultimate goal, we must be prepared to traverse the same thorny path to reach it. If we are not so prepared, independence will ever be an idle dream and Dominion Status an ever receding will-o'-the wisp

Criticism of Viceroy's speech

I must here notice another part of the Viceroy's speech[1] from which I have already quoted. He draws a dark picture of the damage that India is "likely to suffer at the hands of its false friends who would guide it towards the morass of independence." The description of 'independence' as a 'morass' is rather original. It would be more correct to say that we have to cross a morass before we arrive at independence. But the morass surrounds us on all sides and we can arrive nowhere except by crossing it. That being so our friends who support the movement say: why not make for independence pure and unadulterated which depends upon your own effort, however long and arduous, instead of floundering in the direction of Dominion Status which depends upon the good will of Britain. They argue that it will be sheer waste of time, energy, and sacrifice first to struggle in the morass for Dominion Status and when you find your way barred then to bungle back to the starting point and plunge again into the same morass to struggle for independence. From Lord Irwin's point of view this argument is unanswerable. From my point of view Dominion Status is passed on the way to independence, and if it is refused you

[1] See p. 208.

have simply to press on to your destination which must always be independence. Lord Irwin's argument based on loyalty to the Crown can easily be overstressed. Loyalty is a fine thing but the strain it can bear is not unlimited.

Remarks on loyalty

But it is obvious that independence does not mean walking out of the world. If you continue to live in it you must come across others who also live in the same world. It is neither necessary nor possible for the existence of an independent state in the present day world conditions to cut off all political, economic, and social relations with other states. Indeed the more independent you are, the more necessary it will be to establish relations all round. When, therefore, we talk of the severance of the British connection we do not mean a cessation of all relations, but such appropriate change in existing relations as is necessary to transform a dependency into a free state. The extent of the change will depend upon the extent of freedom we achieve. If it is Dominion Status, the change, as it is now well understood, will be from a dependency to 'an autonomous nation, free and equal member of the British Commonwealth of Nations.' If, however, it is complete independence, India will stand out of the British Commonwealth of Nations and the nature of her relations with Great Britain will be determined by treaty and mutual understanding. In either case, some connection with other nations including the British must subsist if we mean to take an active part in shaping our own future and that of the world.

What severance of British connection means

VI. Presidential Address of Jawaharlal Nehru, Lahore, 1929.

If the Calcutta resolution holds, we have but one goal to-day, that of independence. Independence is not a happy word in the world to-day; for it means exclusiveness and isolation. Civilisation has had enough of narrow nationalism and gropes towards a wider co-operation and inter-dependence. And if we use the word 'independence' we do so in

What independence means

no sense hostile to the larger ideal. Independence for us means complete freedom from British domination and British imperialism. Having attained our freedom, I have no doubt that India will welcome all attempts at world co-operation and federation, and will even agree to give up part of her own independence to a larger group of which she is an equal member.

The British Empire to-day is not such a group and cannot be so long as it dominates over millions of people and holds large areas of the world's surface despite the will of their inhabitants. It cannot be a true commonwealth so long as imperialism is its basis and the exploitation of other races its chief means of sustenance. The British Empire to-day is indeed gradually undergoing a process of political dissolution. It is in a state of unstable equilibrium. The Union of South Africa is not a very happy member of the family, nor is the Irish Free State a willing one. Egypt drifts away. India could never be an equal member of the Commonwealth unless imperialism and all it implies is discarded. So long as this is not done, India's position in the Empire must be one of subservience and her exploitation will continue

The British Empire is not a Common-wealth.

Disintegrating Empire of Britain

There is talk of world-peace and pacts have been signed by the nations of the world. But despite pacts armaments grow and beautiful language is the only homage that is paid to the goddess of peace. So long as there is domination of one country by another, or the exploitation of one class by another, there will always be attempts to subvert the existing order and no stable equilibrium can endure. Out of imperialism and capitalism peace can never come. And it is because the British Empire stands for these and bases itself on the exploitation of the masses that we can find no willing place in it. No gain that may come to us is worth anything unless it helps in removing the grievous burdens on our masses. The weight of a great Empire is heavy to carry and for long our people

Misery of Indian masses cannot be relieved if India remains a part of the exploiting Empire of Britain.

have endured it. Their backs are bent down and their spirit has almost broken. How will they share in the Commonwealth partnership if the burden of exploitation continues? Many of the problems we have to face are the problems of vested interests mostly created or encouraged by the British Government. The interests of the Rulers of Indian States, of British officials and British capital and Indian capital and of the owners of big Zamindaries are ever thrust upon us and they clamour for protection. The unhappy millions who really need protection are almost voiceless and have no advocates.

Vested interests

We have had much controversy about Independence and Dominion Status and we have quarrelled about words. But the real thing is the conquest of power by whatever name it may be called. I do not think that any form of Dominion Status applicable to India will give us real power A test of this power would be the entire withdrawal of the alien army of occupation and economic control. Let us, therefore, concentrate on these, and the rest will follow easily.

Controversy regarding Dominion Status and independence

We stand therefore to-day for the fullest freedom of India. This Congress has not acknowledged and will not acknowledge the right of the British Parliament to dictate to us in any way. To it we make no appeal. But we do appeal to the Parliament and the conscience of the world, and to them we shall declare, I hope, that India submits no longer to any foreign domination. To-day or to-morrow, we may not be strong enough to assert our will. We are very conscious of our weakness, and there is no boasting in us or pride of strength. But let no one, least of all England, mistake or under-rate the meaning or strength of our resolve. Solemnly, with full knowledge of consequences I hope, we shall take it and there will be no turning back. A great nation cannot be thwarted for long when once its mind is clear and

Britain has no right to dictate to India.

resolved. If to-day we fail and to-morrow brings no success, the day after will follow and bring achievement.

* * * *

VII. Resolution of Congress, Lahore Session, 1929.

This Congress, in pursuance of the resolution passed at its session at Calcutta last year, declares that the word "Swaraj" in Article 1 of the Congress Constitution shall mean complete independence and further declares the entire scheme of the Nehru Committee's report to have lapsed and hopes that all Congressmen will henceforth devote their exclusive attention to the attainment of complete independence for India. Nehru Report lapsed

VIII. Resolution of Congress Working Committee[1], January 26, 1930.

We believe that it is the inalienable right of the Indian people, as of any other people, to have freedom and to enjoy the fruits of their toil and have the necessities of life, so that they may have full opportunties of growth. We believe also that if any Government deprives a people of these rights and oppresses them, the people have a further right to alter it or abolish it. The British Government of India has not only deprived the Indian people of their freedom but has based itself on the exploitation of the masses, and has ruined India economically, politically, culturally and spiritually. We believe therefore that India must sever the British connection and attain *Purna Swaraj* or complete independence. "Independence Day" resolution

IX. Presidential Address of Vallabhbhai Patel, Karachi, 1931.

There is no receding from the Lahore resolution of Complete Independence. This independence does not

[1] This resolution, of which only the first paragraph is quoted here, was adopted by public meetings all over India on "Independence Day" (January 26) every year from 1930 to 1947.

Independence does not exclude partnership.

mean, was not intended to mean, a churlish refusal to associate with Britain or any other power. Independence therefore does not exclude the possibility of equal partnership for mutual benefit and dissolvable at the will of either party.

X. Resolution of Congress, Karachi Session, 1931.

This Congress . . desires to make it clear, that the Congress goal of Purna Swaraj (Complete Independence) remains intact . . . .

XI. Resolution of Working Committee, September, 1934.

Meaning of 'Purna Swaraj'

. . . . . Purna Swaraj includes unfettered national control, among other things, over the Army and other defence forces, external affairs, fiscal and commercial matters, financial and economic policy. A free India should have the freedom to make its choice between voluntary partnership with the British and complete separation . . . . .

31. SIMON COMMISSION'S PROPOSALS ON FUTURE CONSTITUTION OF INDIA.

Outline of Provincial Changes

364. In the Provinces, the main consequences of adopting our proposals would be as follows:

End of Dyarchy

The boundary now set up between departments of which Indian Ministers may take charge and departments from which they are excluded will be removed, and thus Dyarchy will terminate.

Powers of Governor

The conduct of provincial administration as a whole will rest with Governor. These Ministers, whether elected Members of the Legislature or not, will have joint responsibility for action and policy. The constitution of the Provincial Cabinet will be elastic and, where and when the Governor considers it necessary, it will contain an official element.

The powers of the Governor for certain essential purposes, such as the protection of Minorities, and of the Civil Service, will be defined, and will be exercised within the limits and under the conditions we have described.

Full powers of intervention in the event of a breakdown will remain in the hands of the Governor, subject to the direction of the Governor-General.

The Provincial Legislatures will be based upon a widened franchise—the extension we propose would treble the electorate and would include the admission of a larger number of women voters. Constitution of Provincial Legislature

Certain important Minorities will be adequately protected by the continuance of communal electorates unless and until agreement can be reached upon a better method. Communal electorates to be continued

The Depressed Classes will get representation by reservation of seats.

The Legislatures will be enlarged, and the constituencies reduced to a more manageable size. The Provincial Councils instead of being, as at present, purely legislative bodies, will acquire certain powers of recasting their own representative system, so that each Province may advance to self-government on lines which are found to be best suited for its individual needs, subject always to securing that the vote of the majority shall not introduce constitutional changes which would prejudice minority rights.

The Provinces will be provided with enlarged financial resources.

As for Provincial areas, the question whether some redistribution is desirable will at once be taken up; such cases as those of Sind and the Oriya-speaking peoples will be the first to be considered. Creation of new Provinces

Burma, which is admittedly not a natural part of British India, will be separated forthwith. Provision must be made without delay for framing its future Constitution. Separation of Burma

Reforms in N.W.F.P.

The administered areas of the North-West Frontier Province will now receive an advance in constitutional status represented by the creation of a Local Legislature . . . . Both it and Baluchistan will acquire the right to representation at the Centre.

'Backward Tracts'

The complicated and interlacing system of administration of the Backward Tracts will be revised and such parts of these as remain Excluded Areas will come under the charge of the central administration.

Modifications at the Centre

365. We now pass to the Centre.

Constitution of Central Legislature: (1) Lower Chamber

The Legislative Assembly, which should be called the 'Federal Assembly', will be reconstituted on the basis of the representation of the Provinces and other areas in British India according to population. Members representing Governors' Provinces will be elected by the Provincial Councils by the method of proportional representation, which will ensure that members belonging to minority communities will be included in sufficient numbers in the Federal Assembly. Members will be returned from the North-West Frontier Province and other areas outside the Governors' Provinces by methods appropriate to each case The official members of the Federal Assembly will consist of such members of the Governor-General's Council as sit in the Lower House, together with twelve other nominated officials.

(2) Upper Chamber

The Council of State will continue with its existing functions as a body of elected and nominated Members chosen in the same proportions as at present. Its Members, who must have high qualifications, will, so far as they are elected, be chosen by indirect election carried out by Provincial Second Chambers if such bodies are constituted, or, failing this, by the Provincial Councils.

Powers of Central Legislature

The existing legislative and financial powers of the two Chambers of the Central Legislature will remain as at present, but the Federal Assembly will

also have the special function of voting certain indirect taxes, collected by a central agency, the net proceeds of which will fall into a Provincial Fund for the purpose of being distributed amongst the different units represented in the Federal Assembly.

Central Executive

The Central Executive will continue to be the Governor-General in Council, but the Governor-General will henceforward be the authority who will select and appoint his Executive Councillors. Existing qualifications will remain, but will be laid down in statutory rules made under the new Government of India Act, so that when occasion arises to modify these conditions hereafter this may be done without passing a new Act of Parliament. But any modification in the statutory rules made for this purpose would require to be laid before both Houses of Parliament and the approval of both Houses expressed by resolution.

Commander-in-Chief

It is proposed that among the members of the Governor-General's Council should be one whose primary function it would be to lead the Federal Assembly We propose that the Commander-in-Chief should no longer be a member of it, or of the Central Legislature.

The Army

Governor-General's responsibility for defence

366. We have suggested for consideration a method by which, if agreement could be reached, the obstacle which the composition and functions of the Army in India present to the more rapid development of responsible government might be removed through treating the defence of India as a matter which should fall within the responsibilities of the Governor-General, advised by the Commander-in-Chief, as representing the Imperial authorities, instead of being part of the responsibilities of the Government of India in relation to the Central Legislature.

The Civil Services, High Courts, India Office

'Security Services'

367. As regards the Civil Services of India, the Security Services must continue to be recruited as all-India Services by the Secretary of State, and their existing rights must be maintained. These Security Services include the Indian Civil Service and the Indian Police Service. It is a matter for consideration whether the Irrigation Service and the Forest Service should not be similarly recruited. The privilege of premature retirement will be extended.

The rates of Indianization laid down by the Lee Commission for the Security Services will be maintained.

Public Service Commissions

In addition to the existing Public Service Commission, we intend that there should be established by Statute similar bodies covering the Provincial and Subordinate Services in all the Provinces.

High Courts

The High Courts will be centralized, and the expenses of the High Courts will become a Central charge.

Secretary of State

As regards the India Office, the Governor-General in Council will remain in constitutional theory under the superintendence, direction and control of the Secretary of State, and the extent to which this control is relaxed or falls into desuetude will depend upon future practice, and cannot be laid down in the Statute.

Apart from the Secretary of State's authority over the Governor-General in Council, he will exercise no control over Provincial Governments, save in so far as he does so in connexion with the exercise of special powers vested in the Governor.

Council of India

The functions and composition of the Council of India will be modified. Its size will be reduced, and the majority of its Members should have the qualification of more recent Indian experience than is required at present. The Council will exist primarily as an advisory body, but independent powers will continue for (1) the control of Service condi-

tions, and (2) the control of non-votable Indian expenditure.

The Indian States

368. Lastly, for the purpose of promoting the closer association with British India of the Indian States in matters of common concern for India as a whole, we propose that the new Act should provide that it shall be lawful for the Crown to create a Council for Greater India, containing both representatives of the States and members representing British India. This Council would have consultative and deliberative functions in regard to a scheduled list of 'matters of common concern', together with such other subjects of common concern as the Viceroy from time to time certifies as suitable for consideration by the Council. . . . We put forward the proposals as designed to make a beginning in the process which may lead to the Federation of Greater India[1].

'Council of Greater India' representing British India and Princely States

[1] The Simon Commission observed: "The ultimate Constitution of India must be federal, for it is only in a federal Constitution that units differing so widely in constitution as the Provinces and the States can be brought together while retaining internal autonomy. This is recognised in the Montagu-Chelmsford Report: "Granted the announcement of August 20th, we cannot at the present time envisage its complete fulfilment in any form other than that of a congress of self-governing Indian Provinces associated for certain purposes under a responsible government of India; with possibly what are now the Native States of India finally embodied in the same whole, in some relation which we will not now attempt to define". This statement is as true to-day as when it was written, but opinion has, we believe, advanced considerably along these times during the intervening period. . . . .However distant that day may be, we desire in our proposals to do nothing to hinder but everything to help its arrival, for already there are emerging problems that can only be settled satisfactorily by co-operation between British India and the States".

Simon Commission on Indian Federation

Montagu-Chelmsford Report on Indian Federation

32. INDIAN NATIONAL CONGRESS ON FIRST ROUND TABLE CONFERENCE[1], 1931.

[The reactions to Lord Irwin's announcement of October, 1929, were favourable. The Working Committee of the Congress issued a manifesto on November 2, 1929, in which the following cautious statement was made: ". . . . we hope to be able to tender our co-operation to His Majesty's Government in their effort to evolve a scheme of Dominion constitution suitable to India's needs, but we deem it necessary that certain acts should be done and that certain points should be cleared so as to inspire trust and to ensure the co-operation of the principal political organisations in the country". On December 23, 1929, some Congress leaders including Mahatma Gandhi, and Mr M. A Jinnah saw Lord Irwin at Delhi and wanted an assurance that the contemplated Conference in London would proceed on the basis of full Dominion Status for India. Lord Irwin could not give that assurance. The Congress leaders then proceeded to Lahore, where, on December 31, 1929, the Congress in full session adopted a resolution on complete independence Lord Irwin's address to the Legislative Assembly in January, 1930, removed all chances of reconciliation The great Civil Disobedience Movement of 1930-31 followed. The Congress naturally did not participate in the First Round Table Conference The Gandhi-Irwin Agreement[2] was concluded in March, 1931, and in August, 1931, Mahatma Gandhi agreed to represent the Congress in the Second Round Table Conference]

Round Table Conference not representative of Indian people

The Working Committee of the Indian National Congress is not prepared to give any recognition to the proceedings of the so-called Round Table Conference between certain members of the British Parliament, the Indian Princes and individual Indians selected by the Government from among its supporters and not elected as their representatives by any section of the Indian people. The Committee holds that the British Government stands self-condemned by the methods it has employed of making a show of consulting representatives of India, while as a matter of fact it has been smothering her true voice by the incarceration of the real leaders of the Nation like Mahatma Gandhi and Pandit Jawaharlal Nehru, by

British policy of repression

[1] Resolution of Working Committee, January 21, 1931.

[2] See the text of the Agreement in Sitaramyya, *History of the Indian National Congress*, Vol. I, pp. 437-442.

ordinances and imprisonments and by *lathi* charges and firing on thousands of peaceful, unarmed and unresisting citizens engaged in the patriotic pursuit of winning freedom for their country by resorting to civil disobedience which, the Committee maintains, is a legitimate weapon in the hands of all oppressed nations.

Civil Disobedience

The Committee has carefully considered the declaration of the policy of the British Government made by Ramsay Macdonald, the Prime Minister of England, on behalf of the Cabinet on the 19th January, 1931, and is of opinion that it is too vague and general to justify any change in the policy of the Congress.

33. MAHATMA GANDHI AT ROUND TABLE CONFERENCE[1], 1931.

(Second Session; November 30, 1931)

. . . . I said at one of the preliminary meetings of the Federal Structure Committee that the Congress claimed to represent over 85 per cent. of the population of India, that is to say the dumb, toiling, semi-starved millions. But I went further: that the Congress claimed also by right of service to represent even the Princes, if they would pardon my putting forth that claim, and the landed gentry, the educated class. I wish to repeat that claim and I wish this evening to emphasise that claim.

Congress claims to represent dumb millions, even Princes

All the other parties at the meeting represent sectional interests. Congress alone claims to represent the whole of India, all interests. It is no communal organisation; it is a determined enemy of communalism in any shape or form. Congress knows no distinction of race, colour or creed; its platform is universal. It may not always have lived up to the

Congress is not a communal organisation.

[1] See C. P. Shukla, *When Gandhiji Returned Empty-handed.*

Mahatma Gandhi said, "I admit that I have come back empty-handed, but I am thankful that I have not lowered or in any way compromised the honour of the flag that was entrusted to me."

creed. . . . .But the worst critic will have to recognise, as it has been recognised, that the National Congress of India is a daily growing organisation, that its message penetrates the remotest village of India; that on given occasions the Congress has been able to demonstrate its influence over and among these masses who inhabit 700,000 villages.

Influence of Congress over the masses

Congress is not one of the parties.

And yet here I see that the Congress is treated as one of the parties. I do not mind it, I do not regard it as a calamity for the Congress; but I do regard it as a calamity for the purpose of doing the work for which we have gathered together here. I wish I could convince all the British public men, the British Ministers, that the Congress is capable of delivering the goods. The Congress is the only all-India-wide national organisation, bereft of any communal basis; that it does represent all the minorities which have lodged their claim here. . . . .The Congress, I say, claims to represent all these minorities.

Congress represents all minorities.

Strength of the Congress

What a great difference it would be today if this claim on behalf of the Congress was recognised. I feel that I have to state this claim with some degree of emphasis on behalf of peace, for the sake of achieving the purpose which is common to all of us. . . . .I say so for this reason. Congress is a powerful organisation; Congress is an organisation which has been accused of running or desiring to run a parallel Government; and in a way I have endorsed the charge. If you could understand the working of the Congress, you would welcome an organisation which could run a parallel Government and show that it is possible for an organisation, voluntary, without any force at its command, to run the machinery of Government even under adverse circumstances. But no. Although you have invited the Congress, you reject its claim to represent the whole of India . . . . .

British distrust of the Congress

Congress represents spirit of rebellion.

The Congress represents the spirit of rebellion. I know that the word "rebellion" must not be whispered at a Conference which has been summoned in order to arrive at an agreed solution of India's troubles

through negotiation. Speaker after speaker has got up and said that India should achieve her liberty through negotiation, by argument, and that it will be the greatest glory of Great Britain if Great Britain yields to India's demands by argument. But the Congress does not hold that view, quite. The Congress has an alternative which is unpleasant to you.

I heard several speakers. . . .saying what a dire calamity it would be if India was fired with the spirit of lawlessness, rebellion, terrorism and so on . . . . the page of history is soiled red with the blood of those who have fought for freedom I do not know an instance in which nations have attained their own without having to go through an incredible measure of travail. The dagger of the assassin, the poison bowl, the bullet of the rifleman, the spear and all these weapons and methods of destruction have been up to now used by what I consider blind lovers of liberty and freedom, and the historian has not condemned them. I hold no brief for the terrorists . . . . .

Freedom never won except through violence

. . . . The Congress . . . . comes upon the scene and devises a new method not known to history, namely, that of civil disobedience, and the Congress has been following that method up. But . . . . I am told that that is a method that no Government in the world will tolerate. Well, of course the Governments may not tolerate, no Government has tolerated open rebellion. No Government may tolerate civil disobedience, but Governments have to succumb even to these forces. . . . .And in India Lord Chelmsford had to do the same thing; the Governor of Bombay had to do the same thing in Borsad and Bardoli. I suggest to you, Prime Minister[1], it is too late today to resist this . . . . . I shall hope against hope, I shall strain every nerve to achieve an honourable settlement for my country if I can do so without having to put the millions of my countrymen and country-

New method discovered by Congress —Civil Disobedience

'Honourable settlement,' if possible: 'ordeal of fire,' if necessary

[1] Mr. Ramsay MacDonald was the Chairman of the Conference, and he was in the chair when Mahatma Gandhi spoke

women and even children through this ordeal of fire. It can be matter of no joy or comfort to me to lead them on again to a fight of that character, but if a further ordeal of fire has to be our lot, I shall approach that with the greatest joy and with the greatest consolation that I was doing what I felt to be right, and the country will have the additional satisfaction of knowing that it was not at least taking lives, it was giving lives; it was not making the British people directly suffer, it was suffering. Professor Gilbert Murray told me . . . . . . : You do not consider for one moment that we Englishmen do not suffer when thousands of your countrymen suffer, that we are so heartless? I do not think so. I do know that you will suffer; but I want you to suffer because I want to touch your hearts; and when your hearts have been touched will come the psychological moment for negotiation. Negotiation there always will be; and if this time I have travelled all these miles in order to enter upon negotiation, I thought that your countryman Lord Irwin had sufficiently tried us through his ordinances, that he had sufficient evidence that thousands of men and women of India and that thousands of children had suffered; and that, ordinance or no ordinance, *lathis* or no *lathis*, nothing would avail to stem the tide that was onrushing and to stem the passions that were rising in the breasts of the men and women who were thirsting for liberty.

Hearts of British people to be touched through suffering

Sufferings of India in 1930-31

Whilst there is yet a little sand left in the glass, I want you to understand what this Congress stands for. . . . .I will count no sacrifice too great if by chance I can pull through an honourable settlement. You will find me always having the greatest spirit of compromise if I can but fire you with the spirit that is working in the Congress, namely, that India must have real liberty. Call it by any name you like: a rose will smell as sweet by any other name, but it must be the rose of liberty that I want and not the artificial product. If your mind and the Congress

Congress ready for compromise if 'real liberty' is available for India

mind, the mind of this Conference and the mind of the British people, means the same thing by the same word, then you will find the amplest room for compromise, and you will find the Congress itself always in a compromising spirit. But so long as there is not that one mind, that one definition, not one implication for the same word that you and I and we may be using, so long there is no compromise possible. How can there be any compromise so long as we each one of us has a different definition for the same words that we may be using? It is impossible, Prime Minister I want to suggest to you in all humility that it is utterly impossible then to find a meeting ground, to find a ground where you can apply the spirit of compromise. And I am very grieved to say that up to now I have not been able to discover a common definition for the terms that we have been exchanging during these weary weeks.

Compromise not possible if Indians and Englishmen do not agree about political status of India

. . . .It is friendship I crave. My business is not to throw overboard the slave-holder and tyrant. My philosophy forbids me to do so, and today the Congress has accepted that philosophy not as a creed, as it is to me, but as a policy, because the Congress believes that it is the right and best thing for India, a nation of 350 millions, to do. A nation of 350 millions people does not need the dagger of the assassin, it does not need the poison bowl, it does not need the sword, the spear or the bullet. It needs simply a will of its own, an ability to say "No", and that nation is today learning to say "No".

India developing will to be free

But what is it that that nation wants? Summarily, or at all to dismiss Englishmen? No. Its mission is today to convert Englishmen. I do not want to break the bond between England and India, but I do want to transform that bond. I want to transform that slavery into complete freedom for my country. Call it complete independence or whatever you like. I will not quarrel about that word, and even though my countrymen may dispute with me

Bond between India and England to be reduced from slavery to 'complete freedom'

for having taken some other word I shall be able to bear down that opposition so long as the content of the word that you may suggest to me bears the same meaning. Hence I have times without number to urge upon your attention that the safeguards that have been suggested are completely unsatisfactory. They are not in the interests of India.

Proposed 'safeguards' unsatisfactory

Three experts[1] from the Federation of Commerce and Industry have . . . . told you . . . . how utterly impossible it is for any body of responsible Ministers to tackle the problem of administration when 80 per cent. of India's resources are mortgaged irretrievably. Better than I could have shown to you they have shown . . . . what these financial safeguards mean for India. They mean the complete cramping of India. They have discussed at this table financial safeguards, but that includes necessarily the question of Defence and the question of the Army. Yet while I say that the safeguards are unsatisfactory as they have been presented.....I do not hesitate to repeat, that the Congress is pledged to giving safeguards, endorsing safeguards which may be demonstrated to be in the interests of India.

'Safeguards' must be in the real interests of India and England.

At one of the sittings of the Federal Structure Committee I had no hesitation in amplifying the admission and saying that these safeguards must be also of benefit to Great Britain. I do not want safeguards which are merely beneficial to India and prejudicial to the real interests of Great Britain. The fancied interests of India will have to be sacrificed. The fancied interests of Great Britain will have to be sacrificed. The illegitimate interests of India will have to be sacrificed. The illegitimate interests of Great Britain will also have to be sacrificed. . . . .

.....I shall be here as long as I am required because I do not want to revive civil disobedience.

[1] Mr. G D. Birla, Sir Purshotamdas Thakurdas, Mr. Jamal Muhammad.

I want to turn the truce that was arrived at, at Delhi, into a permanent settlement. But for heaven's sake give me, a frail man, 62 years gone, a little bit of a chance. Find a little corner for him and the organisation that he represents. You distrust that organisation though you may seemingly trust me. Do not for one moment differentiate me from the organisation of which I am but a drop in the ocean. I am no greater than the organisation to which I belong. I am infinitely smaller than that organisation; and if you find me a place, if you trust me, I invite you to trust the Congress also. Your trust in me otherwise is a broken reed. I have no authority save what I derived from the Congress If you will work the Congress for all it is worth, then you will say good-bye to terrorism . . . .Today you have to fight the school of terrorists which is there with your disciplined and organised terrorism, because you will be blind to the facts or the writing on the wall. Will you not see the writing that these terrorists are writing with their blood? Will you not see that we do not want bread made of wheat, but we want bread of liberty; and without that liberty there are thousands today who are sworn not to give themselves peace or to give the country peace.

Anxiety for peace

Appeal for trusting Congress

Lesson of terrorism

I urge you then to read that writing on the wall. I ask you not to try the patience of a people known to be proverbially patient. We speak of the mild Hindu, and the Mussulman also by contact, good or evil, with the Hindu, has himself become mild. And that mention of the Mussulman brings me to the baffling problem of minorities. . . . .I repeat what I used to say in India—. . . .that without the problem of minorities being solved there is no Swaraj for India, there is no freedom for India. . . .I repeat . . . that so long as the wedge in the shape of foreign rule divides community from community and class from class, there will be no real living solution, there will be no living friendship between these communities. It will be after all and at best a paper solution. But immediately you withdraw that wedge, the domestic

Problem of minorities

Foreign rule—obstacle to communal unity

ties, the domestic affections, the knowledge of common birth—do you suppose that all these will count for nothing?

Were Hindus and Mussulmans and Sikhs always at war with one another when there was no British rule, when there was no English face seen there? We have chapter and verse given to us by Hindu historians and by Mussulman historians to say that we were living in comparative peace even then. And Hindus and Mussulmans in the villages are not even today quarrelling. In those days they were not known to quarrel at all. . . . .This quarrel . . . .is coeval with the British advent, and immediately this relationship, the unfortunate, artificial, unnatural relationship between Great Britain and India, is transformed into a natural relationship, when it becomes, if it does become, a voluntary partnership to be given up, to be dissolved at the will of either party, when it becomes that, you will find that Hindus, Mussulmans, Sikhs, Europeans, Anglo-Indians, Christians, Untouchables, will all live together as one man.

Communal conflict is 'coeval with the British advent'.

Communal conflict will disappear with the end of British rule.

I want to say one word about the Princes. . . . . It is open to the Princes to give their terms on which they will join the Federation. I have appealed to them to make the path easy for those who inhabit the other part of India. . . . .I think that if they accepted, no matter what they are, but some fundamental rights as the common property of all India, and if they accepted that position and allowed those rights to be tested by the court, which will be again of their own creation, and if they introduced elements —only elements—of representation on behalf of their subjects, I think that they would have gone a long way to conciliate their subjects. They would have gone a long way to show to the world and to show to the whole of India that they are also fired with a democratic spirit, that they do not want to remain undiluted autocrats, but that they want to become constitutional monarchs, even as King George of Great Britain is.

Appeal to Princes

24. WORK DONE BY ROUND TABLE CONFERENCE.

I. Speech of Sir Tej Bahadur Sapru, January 19, 1931.

....Now, during the last nine weeks what is it that we have witnessed emerging from this great Conference? There are three central ideas which have emerged. One, the higher, the nobler, loftier idea of an all-India federation, which has taken such a material shape, if I may say so, mainly because of the patriotic attitude adopted by the Indian Princes. The second important idea which, from the point of view of British India, is of the highest importance is the idea of responsibility at the Centre. Lord Reading . . . quoted from the speeches of Their Highnesses the Maharaja of Bikaner and the Nawab of Bhopal to show how, so far as the Princes were concerned, the only condition and the only terms on which they would come into the Federation was that there should be a responsible Government established . . . The third important idea which has emerged, and which . . . is an integral idea of all systems of responsible government, is that India must be prepared in the years to come to defend herself . . . It has been conceded, it has been acknowledged that we are entitled to have an Indian Sandhurst, and that it must be established to qualify Indians ultimately to take the responsibility for the defence of their own country. . . .

Three central ideas

(1) Federation

(2) Responsibility at the Centre

(3) Defence

II. Speech of Sir Samuel Hoare[1], December 24, 1932.

. . . we have not been working in an empty void. We have not been attempting to create a situation in the air. We have not been, like the Abbe Sieyes in the years of the French Revolution, creating paper constitutions. From start to finish we have been circumscribed by the hard facts of the world as we find it. We have been confronted with

[1] Secretary of State for India.

Reconciling the claims of three partners'

the problem of reconciling the claims of three partners who have for many generations been united in an undertaking of far-reaching ramifications: Great Britain on the one hand, British India on the other, and Indian India on the other. The old Articles of Association were getting out of date; a new bond of union had to be found.

Idea of Federation —"turning point in the course of the British Empire"

.... the great achievement of the First Round Table Conference was to establish the fact for the first, and, I believe, for all time that the new bond must be the bond of an All-India Federation with the rights of each of the three parties effectively safeguarded. I believe that historians will say that this decision was a turning point in the course of the British Empire.

Second Round Table Conference

The second Conference met in the face of very great difficulties. On the one hand we were in the throes of a world economic crisis; on the other we were faced with a change of Government and an impending General Election. . . .

Communal Award

But there was a third difficulty. There was the difficulty of the communal question. There we found with the best will in the world at every stage last year we were brought up against the barrier of the communal difficulty. I think the real achievement of the Conference last year was to start on foot the whole series of enquiries that led to the Government's Communal Award and included amongst which were the invaluable Reports of the Committees that went to India in the New Year—Lord Lothian's Committee, Mr. Davidson's Committee and Lord Eustace Percy's Committee. I am quite sure that without the work done by those Committees and without the Communal Award, that reluctantly but none the less inevitably the Government had to make, our deliberations this year would have been rendered impossible and infructuous.

I now come .... to the work of this Conference and I would venture to sum up the results in two

sentences. I would say, first of all, we have clearly delimited the field upon which the future constitution is going to be built. In a much more detailed manner than in the last two years we have delimited the spheres of activity of the various parts of the constitution. Secondly, ... we have I believe created an *espirit de corps* amongst all of us that is determined to see the building that is going to be reared upon the field that we marked out both complete in itself and completed at the earliest possible date. . . .

Third Round Table Conference

35. THE COMMUNAL AWARD.

I. Statement of Mr. Ramsay MacDonald, December 1, 1931.

We must all .... realise that there stands in the way of progress, whether for the Provinces or the Centre, that formidable obstacle, the communal deadlock. I have never concealed from you my conviction that this is above all others a problem for you to settle by agreement amongst yourselves .... This (Round Table) Conference has twice essayed this task; twice it has failed. ....

It is for Indians to solve the communal problem

. .. We shall soon find that our endeavours to proceed with our plans are held up (indeed they have been held up already) if you cannot present us with a settlement acceptable to all parties as the foundation upon which to build. In that event His Majesty's Government would be compelled to apply a provisional scheme, for they are determined that even this disability shall not be permitted to be a bar to progress. This would mean that His Majesty's Government would have to settle for you, not only your problem of representation, but also to decide as wisely and justly as possible what checks and balances the constitution is to contain to protect minorities from an unrestricted and tyrannical use of the democratic principle expressing itself solely through majority power. ....

Failure of Indians to solve communal problem will compel British Government to impose its own solution.

II. Mr. Ramsay MacDonald's Award, August 16, 1932[1].

Prime Minister's Statement, December 1, 1931

1. In the statement made by the Prime Minister on December 1 last on behalf of His Majesty's Government at the close of the second session of the Round Table Conference which was immediately afterwards endorsed by both Houses of Parliament, it was made plain that if the communities in India were unable to reach a settlement acceptable to all parties on the communal question which the Conference had failed to solve, His Majesty's Government were determined that India's constitutional advance should not on that account be frustrated and that they would remove this obstacle by devising and applying themselves a provisional scheme.

Task of framing the constitution held up by commmunal problem

2 On March 19 last His Majesty's Government, having been informed that the continued failure of the communities to reach an agreement was blocking the progress of the plans for the framing of a new constitution, stated that they were engaged upon a careful re-examination of the difficult and controversial questions which arose. They are now satisfied that without the decision of at least some aspects of the problem connected with the position of the minorities under the new constitution no further progress can be made with the framing of the constitution.

Award confined to Provinces only

3. His Majesty's Government have accordingly decided that they will include provisions to give effect to the scheme set out below in the proposals relating to the Indian constitution to be laid in due course before Parliament. The scope of this scheme is purposely confined to the arrangements to be made for representation of the British Indian communities in the provincial legislatures, the consideration of representation in the legislature at the centre being deferred. The decision to limit the scope of the scheme implies no failure to realise that the framing of the

[1] Date of release.

constitution will necessitate decision of a number of other problems of great importance to the minorities. but has been taken in the hope that once a pronouncement has been made upon the basic questions of method and proportion of representation, the communities themselves may find it possible to arrive at a *modus vivendi* on their communal problems which have not as yet received the examination they require.

Revision of Award not to be considered, unless accepted by all parties

4. His Majesty's Government wish it to be most clearly understood that they themselves can be no parties to any negotiations which may be initiated with a view to revision of their decision and will not be prepared to give consideration to any representation aimed at securing a modification of it which is not supported by all parties affected. But they are most desirous to close no door to an agreed settlement, should such happily be forthcoming. If, therefore, before the new Government of India Act has passed into law they are satisfied that the communities who are concerned are mutually agreed upon a practicable alternative scheme either in respect of any one or more of the Governor's provinces or in respect of the whole of British India, they will be prepared to recommend to Parliament that the alternative should be substituted for the provisions now outlined.

Separate communal electorates for Muslims, Europeans and Sikhs

6. Election to the seats allotted to Mahomedan, European and Sikh constituencies will be by voters voting in separate communal electorates[1] covering between them the whole area of a province apart from any portions which may in special cases be excluded from the electoral area as 'backward'. Provisions will be made in the constitution itself to empower the revision of this electoral arrangement (and other similar arrangements mentioned below) after 10 years, with the assent of the communities affected,

[1] Separate communal electorates were provided also for Indian Christians, Anglo-Indians and women 'Labour' seats were to be filled up from non-communal constituencies.

for the ascertainment of which suitable means will be devised.

General seats

7. All qualified electors who are not voters either in a Mahomedan, Sikh, Indian Christian, Anglo-Indian, or European constituency will be entitled to vote in a general constituency.

Marathas

8. Seven seats will be reserved for Mahrattas in certain selected plural number general constituencies in Bombay.

Concessions to 'Depressed Classes'

9. Members of the 'depressed classes' qualified to vote will vote in a general constituency. In view of the fact that for a considerable period these classes would be unlikely by this means alone to secure any adequate representation in the Legislature, a number of special seats will be assigned to them. These seats will be filled by election from special constituencies in which only members of 'the depressed classes' electorally qualified will be entitled to vote. Any person voting in such a special constituency will, as stated above, be also entitled to vote in a general constituency. It is intended that these constituencies should be formed in selected areas where the depressed classes are most numerous and that, except in Madras, they should not cover the whole area of a province. In Bengal, it seems possible that in some general constituencies the majority of votes will belong to the depressed classes. Accordingly, pending further investigation, no number has been fixed for the members to be returned from the special depressed class constituencies in that province. It is intended to secure that the depressed classes should obtain not less than 10 seats in the Bengal Legislature. . . .

Madras

Bengal

Period of continuance of concessions to 'Depressed classes'

His Majesty's Government do not consider that these special 'depressed classes' constituencies' will be required for more than a limited time. They intend that the constitution shall provide that they shall come to an end after 20 years, if they have not previously been abolished under the general powers of electoral revision referred to in Para 6.

19. . . . . His Majesty's Government consider that the composition of the Upper House in a province should be such as not to disturb, in any essential, the balance between the communities resulting from the composition of the Lower House.

Upper Houses in Provinces

20. His Majesty's Government .... will .... when considering the composition (of the Central Legislature), pay full regard to the claims of all communities for an adequate representation therein.

Central Legislature

III. Mr. Ramsay MacDonald's Statement, August 16, 1932.

We never wished to intervene in the communal controversies of India ... We have realised from the very first that any decision that we may make is likely, to begin with at any rate, to be criticised by every community from the point of view of its own complete demands. . . . .

Our duty was plain. As the failure of the communities to agree amongst themselves has placed an almost insurmountable obstacle in the way of any constitutional development, it was incumbent upon Government to take action in accordance with the pledge that I gave on behalf of the Government at the Round Table Conference in response to repeated appeals from representative Indians and in accordance with the statement to British Parliament and approved by it. .... We should be only too glad if, at any stage before the proposed Bill becomes law, the communities can reach an agreement amongst themselves. But guided by past experience, Government are convinced that no further negotiations will be of any advantage, and they can be no party to them. They will, however, be ready and willing to substitute for their scheme any scheme, whether in respect of any one or more of Governor's Provinces or in respect of the whole of British India, that is generally agreed to and accepted by all the parties affected.

Why British Government issued Communal Award

British Government prepared to modify Communal Award if all affected parties agree

Justification of continuation of separate electorates

In order to appreciate the Government's decision, it is necessary to remember the actual conditions in which it is being given. For many years past separate electorate . . . has been regarded by minority communities as an essential protection for their rights . . . . However much Government may have preferred an uniform system of joint electorates, they found it impossible to abolish safeguards to which minorities still attach vital importance . . . . Government have to face facts as they are, and must maintain this exceptional form of representation.

Explanation and justification of the arrangement regarding Depressed Classes

Our main object in the case of the Depressed Classes has been, while securing to them the spokesmen of their own choice in the Legislatures of the Provinces where they are found in large numbers, at the same time to avoid electoral arrangements which would perpetuate their segregation. Consequently Depressed Class voters will vote in general Hindu constituencies and an elected member in such a constituency will be influenced by his responsibility to this section of the electorate, but for the next twenty years there will also be a number of special seats filled from special Depressed Class electorates in the areas where these voters chiefly prevail. The anomaly of giving certain members of the Depressed Classes two votes is abundantly justified by the urgent need of securing that their claims should be effectively expressed and the prospects of improving their actual condition promoted.

IV. The Poona Pact,[1] September, 1932.

Assignment of seats in different Provinces

1. There shall be seats reserved for the Depressed Classes out of the General Electorate seats in the Provincial Legislatures as follows: Madras 30; Bombay with Sind 15; Punjab 8; Bihar and Orissa

[1] The arrangement embodied in this Pact was accepted by the British Government in supersession of paragraph 9 of the Communal Award.

18; Central Provinces 20; Assam 7; Bengal[1] 30; United Provinces 20;—Total 148. These figures are based on the total strength of the Provincial Councils, announced in the Prime Minister's decision.

2. Election to these seats shall be by joint electorates, subject, however, to the following procedure:—

Procedure of election

All the members of the Depressed Classes registered in the general electoral roll in a constituency will form an electoral college, which will elect a panel of four candidates belonging to the Depressed Classes for each of such reserved seats, by the method of the single vote; the four persons getting the highest number of votes in such primary election shall be candidates for election by the general electorate

Central Legislature

3. Representation of the Depressed Classes in the Central Legislature shall likewise be on the principle of joint electorate and reserved seats by the method of primary election in the manner provided for in Clause 2 above, for their representation in the Provincial Legislatures.

4. In the Central Legislature 18 per cent. of the seats allotted to the general electorate for British India in the said Legislature shall be reserved for the Depressed Classes.

5. The system of primary election to a panel of candidates for election to the Central and Provincial Legislatures, as hereinbefore mentioned, shall come to an end after the first ten years, unless terminated sooner by mutual agreement . . . .

Injustice to 'Caste Hindus' of Bengal

[1] Lord Zetland (formerly Governor of Bengal) pointed out that under the Pact the 'Caste Hindus' of Bengal would be 'arbitrarily limited by the Statute to 70 seats in a Legislative Assembly of 250', and remarked, "to restrict in this way the possible share in the government of the province, of the community which plays a predominant part in its intellectual and political life, seems to us to be both unwise and unfair".

36. INDIAN NATIONAL CONGRESS AND CONCESSIONS TO MUSLIMS.

I. Resolution, Madras Session, 1927.

This Congress resolves:

Joint electorates

That in any future scheme of constitution, so far as representation in the various Legislatures is concerned, joint electorates in all the Provinces and the Central Legislature be constituted.

Reservation of seats with reciprocal concessions to minorities

That, with a view to give full assurances to the two great communities that their legitimate interests will be safeguarded in the Legislatures, such representation of the communities should be secured for the present, and if desired, by the reservation of seats in joint electorates on the basis of population in every province and in the Central Legislature, provided that reciprocal concessions in favour of minorities may be made by mutual agreement so as to give them representation in excess of the proportion of the number of seats to which they would be entitled on the population basis in any province or provinces, and the proportions so agreed upon shall be maintained in the representation of the two communities in the Central Legislature from the provinces.

Reforms in N. W. F. P. and Baluchistan recommended

That the proposal made by the Muslim leaders that reforms should be introduced in the N. W. F. Province and British Baluchistan on the same footing as in other provinces is, in the opinion of the Congress, a fair and reasonable one and should be given effect to . . .

Separation of Sind

That with regard to the proposal that Sind should be constituted into a separate province, this Congress is of opinion that the time has come for the redistribution of provinces on linguistic basis—a principle that has been adopted in the constitution of the Congress.

That, in the future constitution, liberty of conscience shall be guaranteed, and no Legislature, Central or Provincial, shall have power to make any laws interfering with liberty of conscience

Safeguard for liberty of conscience

"Liberty of conscience" means liberty of belief and worship, freedom of religious observances and association and freedom to carry on religious education and propaganda with due regard to the feelings of others and without interfering with similar rights of others.

That no Bill, Resolution, Motion or Amendment regarding inter-communal matters shall be moved, discussed or passed in any Legislature, Central or Provincial, if a three-fourths majority of the members of either community affected thereby in that Legislature oppose the introduction, discussion or passing of such Bill, Resolution, Motion or Amendment

"Inter-communal matters"

"Inter-communal matters" means matters agreed upon as such by a joint standing committee of both communities of the Hindu and Muslim members of the Legislature concerned, appointed at the commencement of every session of the Legislature.

II. Mr. Jinnah's Fourteen Points, March 28, 1929.

Whereas the basic idea on which the All-Parties Conference was called in being and a Convention summoned at Calcutta during Christmas Week 1928 was that a scheme of reforms should be formulated and accepted and ratified by the foremost political organizations in the country as a National Pact; and whereas the Report was adopted by the Indian National Congress only constitutionally for the one year ending 31st December 1929, and in the event of the British Parliament not accepting it within the time limit, the Congress stands committed to the policy and programme of Complete Independence by resort to civil disobedience and non-payment of taxes; and whereas the attitude taken up by the

Nehru Report

Attitude of: (1) Congress,

(2) Hindu Mahasabha, (3) Liberals, (4) Non-Brahmins and Depressed Classes

Nehru Report rejected by Muslim League

Hindu Mahasabha from the commencement through their representatives at the Convention was nothing short of an ultimatum, that if a single word in the Nehru Report in respect of the communal settlement was changed they would immediately withdraw their support to it; and whereas the National Liberal Federation delegates at the Convention took up an attitude of benevolent neutrality, and subsequently in their open session at Allahabad, adopted a non-committal policy with regard to the Hindu-Muslim differences; and whereas the non-Brahmins and Depressed Classes are entirely opposed to it; and whereas the reasonable and moderate proposals put forward by the delegates of the All-India Muslim League at the Convention in modification were not accepted, the Muslim League is unable to accept the Nehru Report.

Basic principles of Constitution acceptable to Muslim League

The League after anxious and careful consideration most earnestly and emphatically lays down that no scheme for the future constitution of the government of India will be acceptable to Mussulmans of India until and unless the following basic principles are given effect to and provisions are embodied therein to safeguard their rights and interests:

(1) The form of the future Constitution should be federal with the residuary powers vested in the Provinces.

(2) A uniform measure of autonomy shall be granted to all Provinces.

(3) All Legislatures in the country and other elected bodies shall be constituted on the definite principle of adequate and effective representation of Minorities in every Province without reducing the majority in any Province to a minority or even equality.

(4) In the Central Legislature, Mussulman representation shall not be less than one-third.

(5) Representation of communal groups shall continue to be by means of separate electorates as at present: provided it shall be open to any community, at any time, to abandon its separate electorate in favour of joint electorate.

(6) Any territorial redistribution that might at any time be necessary shall not in any way affect the Muslim majority in the Punjab, Bengal and the North-West Frontier Province.

(7) Full religious liberty, *i.e.,* liberty of belief, worship and observance, propaganda, association and education, shall be guaranteed to all communities.

(8) No Bill or resolution or any part thereof shall be passed in any Legislature or any other elected body if three-fourths of the members of any community in that particular body oppose such a Bill, resolution or part thereof on the ground that it would be injurious to the interests of that community or in the alternative, such other method is devised as may be found feasible and practicable to deal with such cases.

(9) Sind should be separated from the Bombay Presidency.

(10) Reforms should be introduced in the North-West Frontier Province and Baluchistan on the same footing as in other Provinces.

(11) Provision should be made in the Constitution giving Muslims an adequate share, along with the other Indians, in all the Services of the State and in local self-governing bodies having due regard to the requirements of efficiency.

(12) The Constitution should embody adequate safeguards for the protection of Muslim culture and for the protection and promotion of Muslim education, language, religion, personal laws and Muslim charitable institutions and for their due share in

the grants-in-aid given by the State and by local self-governing bodies.

(13) No Cabinet, either Central or Provincial, should be formed without there being a proportion of at least one-third Muslim Ministers.

(14) No change shall be made in the Constitution by the Central Legislature except with the concurrence of the States constituting the Indian Federation.

III. Resolution of Congress Working Committee[1], July, 1931.

Ideal of Congress: "Pure Nationalism"

However much it may have failed in the realisation, the Congress has, from its very inception, set up pure nationalism as its ideal It has endeavoured to break down communal barriers The following Lahore resolution was the culminating point in its advance towards nationalism:—

Lahore Resolution

"In view of the lapse of the Nehru Report it is unnecessary to declare the policy of the Congress regarding communal questions, the Congress believing that in an independent India communal questions can only be solved on strictly national lines But as the Sikhs in particular, and the Muslims and the other minorities in general, have expressed dissatisfaction over the solution of communal questions proposed in the Nehru Report, this Congress assures the Sikhs, the Muslims and other minorities that no solution thereof in any future constitution will be acceptable to the Congress that does not give full satisfaction to the parties concerned".

Scheme prepared by the Working Committee

Hence the Congress is precluded from setting forth any communal solution of the communal problem. But at this critical juncture in the history of the Nation, it is felt that the Working Committee should suggest for adoption by the country a solution,

[1] This resolution, embodied in a Memorandum dated October 28. 1931, was circulated by Mahatma Gandhi to members of the Round Table Conference.

though communal in appearance, yet as nearly national as possible and generally acceptable to the communities concerned. The Working Committee, therefore, after full and free discussion, unanimously passed the following scheme:—

1. (*a*) The article in the constitution relating to Fundamental Rights shall include a guarantee to the communities concerned of the protection of their cultures, languages, scripts, education, profession and practice of religion and religious endowments. Fundamental Rights

(*b*) Personal laws shall be protected by specific provisions to be embodied in the constitution. Personal Laws

(*c*) Protection of political and other rights of minority communities in the various Provinces shall be the concern and be within the jurisdiction of the Federal Government

2. The franchise shall be extended to all adult men and women. Franchise

(*Note A*.—The Working Committee is committed to adult franchise by the Karachi resolution of the Congress and cannot entertain any alternative franchise. In view, however, of misapprehensions in some quarters, the Committee wishes to make it clear that in any event the franchise shall be uniform and so extensive as to reflect in the electoral roll the proportion in the population of every community.)

3. (*a*) Joint electorates shall form the basis of representation in the future constitution of India. Joint Electorate

(*Note B*.—Wherever possible the electoral circles shall be so determined as to enable every community, if it so desires, to secure its proportionate share in the Legislature.)*

(*b*) That for the Hindus in Sind, the Muslims in representation in the future constitution of India.

* Note B is not part of the scheme but has been added by me as not being inconsistent with the scheme.

(*Intld.*) M. K. G.

Reservation of seats for minorities

and for Hindus and Muslims in any Province where they are less than 25 per cent. of the population, seats shall be reserved in the Federal and Provincial Legislatures on the basis of population with the right to contest additional seats.

Public Services

4. Appointments shall be made by non-party Public Service Commissions which shall prescribe the minimum qualifications, and which shall have due regard to the efficiency of the Public Service as well as to the principle of equal opportunity to all communities for a fair share in the Public Services of the country.

Composition of Cabinets

5. In the formation of Federal and Provincial Cabinets interests of minority communities should be recognised by convention.

N. W. F. Baluchistan

6 The N.W F Province and Baluchistan shall have the same form of government and administration as other Provinces

Sind

7 Sind shall be constituted into a separate Province, provided that the people of Sind are prepared to bear the financial burden of the separated Province.

Nature of Federation

8 The future constitution of the country shall be federal The residuary powers shall vest in the federating Units, unless, on further examination, it is found to be against the best interest of India.

Compromise between 'undiluted communalism' and 'undiluted nationalism'

The Working Committee has adopted the foregoing scheme as a compromise between the proposals based on undiluted communalism and undiluted nationalism Whilst on the one hand the Working Committee hopes that the whole Nation will endorse the scheme, on the other, it assures those who take extreme views and cannot adopt it, that the Committee will gladly, as it is bound to by the Lahore resolution, accept without reservation any other scheme, if it commands the acceptance of all the parties concerned.

IV. Resolution of Congress Working Committee, June, 1934.

The White Paper in no way expresses the will of the people of India, has been more or less condemned by almost all the Indian political parties, and falls far short of the Congress goal if it does not retard the progress towards it The only satisfactory alternative to the White Paper is a constitution drawn up by a Constituent Assembly elected on the basis of adult suffrage or as near it as possible, with the power, if necessary, to the important minorities to have their representatives elected by the electors belonging to such minorities. White Paper not acceptable

The White Paper lapsing, the Communal Award must lapse automatically. Among other things it will be the duty of the Constituent Assembly to determine the method of representation of important minorities and make provision for otherwise safeguarding their interests. Communal Award lapsed

Since, however, the different communities in the country are sharply divided on the question of the Communal Award, it is necessary to define the Congress attitude towards it. The Congress claims to represent equally all the communities composing the Indian nation, and, therefore, in view of the division of opinion, can neither accept nor reject the Communal Award as long as the division of opinion lasts. Congress can neither accept nor reject Communal Award.

At the same time it is necessary to redeclare the policy of the Congress on the communal question :

No solution that is not purely national can be propounded by the Congress. But the Congress is pledged to accept any solution falling short of the national, which is agreed to by all the parties concerned and, conversely, to reject any solution which is not agreed to by any of the said parties.

Judged by the national standard the Communal Award is wholly unsatisfactory, besides being open to serious objections on other grounds. Communal Award 'wholly unsatisfactory'

It is, however, obvious that the only way to prevent untoward consequences of the Communal Award is to explore ways and means of arriving at an agreed solution and not by any appeal on the essentially domestic question to the British Government or any other outside authority

V. Resolution of All-India Congress Committee, Bombay, August, 1936.

The communal decision, which forms part of the new Act, has led to much controversy and the Congress attitude towards it has been misunderstood by some people The rejection in its entirety of the new Act by the Congress inevitably involves the rejection of the communal decision Even apart from the Act as a whole, the communal decision is wholly unacceptable as being inconsistent with independence and the principle of democracy; it encourages fissiparous and disruptive tendencies, hinders the normal growth and consideration of economic and social questions, is a barrier to national progress, and strikes at the root of national unity. No community or group in India profits by it in any real sense, for the larger injury caused by it to all outweighs the petty benefits that some have received Ultimately it probably injures most those groups whom it is meant to favour. The only party that profits by it is the third party which rules and exploits us.

Rejection of Act of 1935 implies rejection of Communal Award

Criticism of Communal Award

The attitude of the Congress is, therefore, not one of indifference or neutrality. It disapproves strongly of the communal decision and would like to end it. But the Congress has repeatedly laid stress on the fact that a satisfactory solution of the communal question can come only through the good will and co-operation of the principal communities concerned. An attempt by one group to get some communal favour from the British Government at the expense of another group results in an increase of communal tension and the exploitation of both groups by the Government. Such a policy is hardly in keeping with the dignity of Indian Nationalism;

Communal question can be solved only through good will and co-operation of principal communities

it does not fit in with the struggle of independence; it does not pay either party in the long run; it side-tracks the main issue.

The Congress, therefore, holds that the right way to deal with the situation created by communal decision is to intensify our struggle for independence and, at the same time, to seek a common basis for an agreed solution which helps to strengthen the unity of India. The effort of one community only to change the decision in the face of opposition of another community might well result in confirming and consolidating that decision, for conflict between the two produces the very situation which gives Government a chance of enforcing such a decision The Congress thus is of opinion that such one-sided agitation can bear no useful result.

One community should not try to change Communal Award in face of opposition of another community.

VI. Resolution of Congress Working Committee, October, 1937.

The Congress has solemnly and repeatedly declared its policy in regard to the rights of the minorities in India and has stated that it considers it its duty to protect these rights and ensure the widest possible scope for the development of these minorities and their participation in the fullest measure in the political, economic and cultural life of the nation. The objective of the Congress is an independent and united India where no class or group or majority or minority may exploit another to its own advantage, and where all the elements in the nation may co-operate together for the common good and the advancement of the people of India....

Congress protects rights of minorities.

Co-operation of communities for common good

....The Congress is opposed to this decision (*i e.*, Communal Award) as it is anti-national, anti-democratic and is a barrier to Indian freedom and the development of Indian unity. Nevertheless the Congress has declared that a change in or suppression of the communal decision should only be brought about by the mutual agreement of the parties con-

Communal Award not to be changed except by mutual agreement

cerned. The Congress has always welcomed and is prepared to take advantage of any opportunity to bring about such a change by mutual agreement.

37. JOINT PARLIAMENTARY COMMITTEE ON INDIAN FEDERATION.

[The Third Session of the Round Table Conference (November—December, 1932) was not attended either by the Congress or by the British Labour Party. In March, 1933, the British Government published a *White Paper* containing a set of proposals for reform which were to be submitted to a Joint Select Committee of Parliament for examination and report "In essence the majority of the Committee accepted the Governmental proposals, but emphasized still more the necessity of safeguards ...."[1]. The *Report* was published in October, 1934.]

26. If the establishment of Provincial Autonomy marks, not so much a new departure, as the next stage in a path which India has long been treading, it is the more necessary that, on entering this stage, we should pause to take stock of the direction in which we have been moving. We have spoken of unity as perhaps the greatest gift which British rule has conferred on India; but in transferring so many of the powers of government to the Provinces, and in encouraging them to develop a vigorous and independent political life of their own, we have been running the inevitable risk of weakening or even destroying that unity. Provincial Autonomy is, in fact, an inconceivable policy unless it is accompanied by such an adaptation of the structure of the Central Legislature as will bind these autonomous units together. In other words, the necessary consequence of Provincial Autonomy in British India is a British-India Federal Assembly. In recent discussions, the word "federation" has become identified with the proposals for an All-India Federation and for the establishment, in the common phrase, of "responsibility at the Centre".....But federation is, of course, simply the method by which a number of Governments,

Unity must

Provincial Autonomy requires readjustment at Centre.

[1] Keith, *Constitutional History of India*, p. 310.

autonomous in their own sphere, are combined in a single State. A Federal Legislature capable of performing this function need not necessarily control the Federal Executive through responsible Ministers chosen from among its members; indeed........ the Central Government of a purely British-India Federation could not, in our opinion, be appropriately framed on this model. But a Federal Legislature must be constituted on different lines from the Central Legislature of a unitary State The Statutory Commission realised this truth and proposed a new form of Legislature at the Centre, specifically designed to secure the essential unity of British India. We have devoted particular attention to the form of the Central Legislature and shall have to recommend the substitution of an alternative scheme for the White Paper proposals.

Simon Commission on Central Legislature

27 Of course, in thus converting a unitary State into a Federation, we should be taking a step for which there is no exact historical precedent Federations have commonly resulted from an agreement between independent or, at least, autonomous Governments, surrendering a defined part of their sovereignty or autonomy to a new central organism. At the present moment, the British Indian Provinces are not even autonomous, for they are subject to both the administrative and the legislative control of the Government of India, and such authority as they exercise has in the main been devolved upon them under a statutory rule-making power by the Governor-General in Council. We are faced, therefore, with the necessity of creating autonomous units and combining them into a federation by one and the same act. But it is obvious that we have no alternative. To create autonomous units without any corresponding adaptation of the existing Central Legislature would be, as the Statutory Commission saw, to give full play to the powerful centrifugal forces of Provincial Autonomy without any attempt to counteract them and to ensure the continued unity

No historical precedent for Indian Federation

Necessity for guarding against centrifugal tendencies

of India. We obviously could not take the responsibility of recommending to Parliament a course fraught with such serious risks. If Parliament should decide to create an All-India Federation, the actual establishment of the new Central Legislature may without danger be deferred for so long as may be necessary to complete arrangements for bringing the representatives of the States into it, but the form of that Legislature must be defined in the Constitution Act itself.

Question of Indian States

28. This brings us to the further proposal laid before us that the Constitution Act should also determine the conditions upon which an All-India Federation is to be established, which includes the Indian States. This is a separate operation, which may proceed simultaneously with the introduction of Provincial Autonomy and the reconstitution of the Central Legislature, but which must be carried out by different methods and raises quite distinct issues of policy. We will leave questions of method to be considered in the body of our Report, but the issues of policy must be briefly discussed here.

Difficulties of creating a Federation composed of disparate units.

29. The Statutory Commission, looked forward to the ultimate establishment of a Federation of Indian States and Provinces, and they recommended that, until this ideal could be realised, policies affecting British India and the States should be discussed between the parties in a consultative, but not legislative, Council of Greater India, consisting of representatives drawn from the States and the British Indian Legislature. The Commission did not anticipate that the Princes would be willing to enter an All-India Federation without some preliminary experience of joint deliberation on matters of common concern, and no doubt the Commission saw in this procedure the means of overcoming, by a process of trial and error, the difficulties of establishing an All-India Federation. These difficulties are obvious and, again, they are quite distinct from the difficulties involved in the constitution of a British-India Federa-

tion. The main difficulties are two: that the Indian States are wholly different in status and character from the Provinces of British-India, and that they are not prepared to federate on the same terms as it is proposed to apply to the Provinces. On the first point, the Indian States, unlike the British-India Provinces, possess sovereignty in various degrees and they are, broadly speaking, under a system of personal government. Their accession to a Federation cannot, therefore, take place otherwise than by the voluntary act of the Ruler of each State, and after accession the representatives of the acceding State in the Federal Legislature will be nominated by the Ruler and its subjects will continue to owe allegiance to him. On the second point, the Rulers have made it clear that, while they are willing to consider federation now with the Provinces of British India on certain terms, they could not, as sovereign States, agree to the exercise by a Federal Government in relation to them of a range of powers identical in all respects with those which that Government will exercise in relation to the Provinces on whom autonomy has yet to be conferred. We have here an obvious anomaly: a Federation composed of disparate constituent units, in which the powers and authority of the Central Government will differ as between one constituent unit and another.

(1) States 'wholly different in status and character' from British Provinces

(2) States not willing to enter Federation on same terms as British Provinces

30. Against these undoubted difficulties, we have to place one great consideration of substance, which appears to us to outweigh the disadvantages of these anomalies. The unity of India on which we have laid so much stress is dangerously imperfect so long as the Indian States have no constitutional relationship with British India. It is this fact, surely, that has influenced the Rulers of Indian States in their recent policy. They remain perfectly free to continue, if they so choose, in the political isolation which has characterised their history since the establishment of the British connection. But they have, it appears, become keenly conscious of the imperfec-

Unity of India endangered without a constitutional relationship between States and British India

tions of the Indian polity as it exists to-day. A completely united Indian polity cannot, it is true, be established either now or, so far as human foresight can extend, at any time. In most respects, the anomalies to which we have referred are the necessary incidents, not merely of the introduction of an All-India Federation at this moment, but of its introduction at any time in the future. So far as we are aware, no section of opinion in this country or in British India is prepared to forego an All-India Federation as an ultimate aim of British policy. Certainly, the Statutory Commission was not prepared to do so, and it is the ideal indicated in their report which has since won so much support among the Indian Princes The question for decision is whether the measure of unity which can be achieved by an All-India Federation, imperfect though it may be, is likely to confer added strength, stability and prosperity on India as a whole—that is to say, both on the States and on British India. To this question, there can, we think, be only one answer, an affirmative one; and that answer does not rest only, or even chiefly, on the kind of general considerations which naturally appeal most strongly to the people of this country. From their point of view it is evident enough that Ruling Princes who in the past have been the firm friends of British rule have sometimes felt their friendship tried by decisions of the Government of India running counter to what they believed to be the interests of their States and peoples. Ruling Princes, however, as members of a Federation, may be expected to give steadfast support to a strong and stable Central Government, and to become helpful collaborators in policies which they have sometimes in the past been inclined to criticise or even obstruct. But an even stronger, and a much more concrete, argument is to be found in the existing economic condition of India.

Will Federation give India 'added strength, stability and prosperity'?

31. The existing arrangements under which economic policies, vitally affecting the interests of

India as a whole, have to be formulated and carried out are being daily put to an ever-increasing strain, as the economic life of India develops. For instance, any imposition of internal indirect taxation in British India involves, with few exceptions, the conclusion of agreements with a number of States for concurrent taxation within their frontiers, or, in default of such agreement, the establishment of some system of internal customs duties—an impossible alternative even if it were not precluded by the terms of the Crown's treaties with some States. Worse than this, India may be said even to lack a general customs system uniformly applied throughout the sub-continent. On the one hand, with certain exceptions, the States are free themselves to impose internal customs duties, which cannot but obstruct the flow of trade. Even at the maritime ports situated in the States, the administration of the tariffs is imperfectly co-ordinated with that of the British India ports, while the separate rights of the States in these respects are safeguarded by long-standing treaties or usage acknowledged by the Crown. On the other hand, tariff policies, in which every part of India is interested, are laid down by a Government of India and British-India Legislature in which no Indian State has a voice, though the States constitute only slightly less than half the area and one-fourth of the population of India. Even where the Government of India has adequate powers to impose internal indirect taxation or to control economic development, as in the cases of salt and opium, the use of those powers has caused much friction and has often left behind it, in the States, a sense of injustice. Moreover, a common company law for India, a common banking law, a common body of legislation on copyright and trade marks, a common system of communications, are alike impossible. Conditions such as these, which have caused trouble and uneasiness in the past, are already becoming, and must in the future increasingly become, intolerable as industrial and commercial development spreads from British India to the States.

Economic ties between States and British India

Difficulties created by lack of common economic policy for the whole of India

Federation may adopt common economic policy for British India and States.

On all these points the Federation now contemplated would have power to adopt a common policy. That common policy would be subject, no doubt, to some reservation of special treaty rights by certain States and, in the States generally, its enforcement would in many respects rest with officers appointed by the State Rulers; but, even so modified, it would mark a long step from confusion towards order. The rights of the States to impose internal customs duties cannot be abolished but . . . moderation in the use of them can be made a condition of federation. In these times, when experience is daily proving the need for the close co-ordination of policies, we cannot believe that Parliament, while introducing a new measure of decentralisation in British India, would be wise to neglect the opportunity now offered to it of establishing a new centre of common action for India as a whole.

Utility of Federation

32. An All-India Federation thus presents solid advantages from the point of view alike of His Majesty's Government, of British India, and of the Indian States. But the attraction of the idea to the States clearly depends on the fulfilment of one condition: that, in acceding to the Federation, they should be assured of a real voice in the determination of its policy. The Princes have, therefore, stated clearly in their declaration that they are willing now to enter an All-India Federation, but only if the Federal Government is a responsible and not an irresponsible Government.

The Indian States and responsibility at the Centre

Legal basis of federal constitution

153. It is clear that, in any new Constitution in which autonomous Provinces are to be federally united under the Crown, not only can the Provinces no longer derive their powers and authorities from devolution by the Central Government, but the Central Government cannot continue to be an agent of the Secretary of State. Both must derive their powers and authority from a direct grant by the Crown. We apprehend, therefore, that the legal

basis of a reconstituted Government of India must be, first, the resumption into the hands of the Crown of all rights, authority and jurisdiction in and over the territories of British India, whether they are at present vested in the Secretary of State, the Governor-General in Council, or in the Provincial Governments and Administrations; and second, their redistribution in such manner as the Act may prescribe between the Central Government on the one hand and the Provinces on the other. A Federation of which the British Indian Provinces are the constituent units will thereby be brought in existence.

Accession of States to Federation must be a voluntary act.

154 The rights, authority and jurisdiction which will thus be conferred by the Crown on the new Central Government will not extend to any Indian State. It follows that the accession of an Indian State to the Federation cannot take place otherwise than by the voluntary act of its Ruler. The Constitution Act cannot itself make any Indian State a member of the Federation; it will only prescribe a method whereby the State may accede and the legal consequences which will flow from the accession. There can be no question of compulsion so far as the States are concerned. Their Rulers can enter or stand aside from the Federation as they think fit. They have announced their willingness to consider federation with the Provinces of British India on certain terms; but, whereas the powers of the new Central Government in relation to the Provinces will cover a wide field and will be identical in the case of each Province, the Princes have intimated that they are not prepared to agree to the exercise by a Federal Government for the purpose of the Federation of an identical range of powers in relation to themselves.

38. JOINT PARLIAMENTARY COMMITTEE ON PROVINCIAL AUTONOMY.

Definition of Provincial Autonomy

48. The scheme of Provincial Autonomy, as we understand it, is one whereby each of the Governors' Provinces will possess an Executive and a Legislature

having exclusive authority within the Province in a precisely defined sphere, and in that exclusively provincial sphere broadly free from control by the Central Government and Legislature. This we conceive to be the essence of Provincial Autonomy, though no doubt there is room for wide differences of opinion with regard to the manner in which that exclusive authority is to be exercised. It represents a fundamental departure from the present system, under which the Provincial Governments exercise a devolved and not an original authority. The Act of 1919 and the Devolution Rules made under it, by earmarking certain subjects as "Provincial subjects", created indeed a sphere within which responsibility for the functions of Government rests primarily upon the Provincial authorities; but that responsibility is not an exclusive one, since the Governor-General in Council and the Central Legislature still exercise an extensive authority throughout the whole of the provinces. Under the proposals in the White Paper, the Central Government and Legislature would, generally speaking, cease to possess in the Governors' Provinces any legal power or authority with respect to any matter falling within the exclusive Provincial sphere, though . . . the Governor-General in virtue of his power of supervising the Governors will have authority to secure compliance in certain respects with directions which he may find it necessary to give.

Act of 1919

White Paper

49. "The Provinces are the domain", wrote the authors of the Montagu-Chelmsford Report, "in which the earlier steps towards the progressive realisation of responsible government should be taken. Some measure of responsibility should be given at once, and our aim is to give complete responsibility as soon as conditions permit". Their intention was to give an independent life to the organisms which would in future form the members of a British India Federation, an ideal at that time not within measurable distance. To-day, so rapid has been the

Montagu-Chelmsford Report

march of events since 1919, we are discussing not only a Federation of British India, but an All-India Federation; and we could not ourselves contemplate such a Federation, whether it comes about in the immediate or more distant future, which in its British Indian aspect is composed of other than autonomous units, independent within their own sphere of any Central control. We have arrived, therefore, at the same conclusion on this subject as the Statutory Commission, and substantially on the same grounds. Of all the proposals in the White Paper, Provincial Autonomy has received the greatest measure of support on every side. The economic, geographical, and racial differences between the Provinces on the one hand and the sense of provincial individuality on the other, have greatly impressed us. The vast distances of India and the increasing complexity of modern government are strong additional arguments in favour of the completion of the process begun in 1919, and of a development in which the life of each Province can find vigorous and adequate expression, free from interference by a remote Central Government.....

Joint Committee agrees with Simon Commission

Arguments in favour of Provincial Autonomy

39. JOINT PARLIAMENTARY COMMITTEE ON RELATIONS BETWEEN GOVERNOR AND MINISTERS.

74....in the present Government of India Act, there is a provision which requires the Governor to be "guided by" the advice of his Ministers in all matters relating to transferred subjects, unless he sees sufficient cause to dissent from their opinion. The Act will commit certain matters to the Governor's sole discretion, such, for instance, as his power of veto over legislation and the regulation of matters relating to the administration of excluded areas. It will also contain a declaration that certain special responsibilities are to rest upon the Governor. For the rest, it will provide that the Governor shall have a Council of Ministers to aid and advise him, but his relations with his Ministers are left to be

Governor's 'discretion' and 'Special Responsibilities'

Instrument of Instructions

determined wholly by the Instrument of Instructions. We agree that it is desirable that the Governor's special responsibilities, over and above the matters which are committed to his sole discretion, should be laid down in the Act itself rather than that they should be left to be enumerated thereafter in the Instrument of Instructions. In the first place, Indian opinion will thereby be assured that the discretionary powers of the Governor to dissent from his Ministers' advice is not intended to be unlimited; and, secondly, the right will thereby be secured to Parliament to consider and debate the scope of the Governor's powers during the passage of the Constitution Bill itself On the other hand, we agree that it would be undesirable to seek to define the Governor's relations with his Ministers by imposing a statutory obligation upon him to be guided by their advice, since to do so would be to convert a constitutional convention into a rule of law and thus, perhaps, to bring it within the cognisance of the courts. We do not, however, think that the inherent legal power of the Governor to act upon his own responsibility is set forth with sufficient clearness in the White Paper, and we recommend that it should be more explicitly defined.

'Inherent legal power of the Governor'

75 We do not understand the declaration of a special responsibility with respect to a particular matter to mean or even to suggest that on every occasion when a question relating to that matter comes up for decision the decision is to be that of the Governor to the exclusion of his Ministers. In no sense does it define a sphere from which the action of Ministers is excluded. In our view, it does no more than indicate a sphere of action in which it will be constitutionally proper for the Governor, after receiving Ministerial advice, to signify his dissent from it and even to act in opposition to it, if in his own unfaltered judgment he is of opinion that the circumstances of the case so require. Nor do we

Meaning of 'Special Responsibilities'

anticipate that the occasions on which a Governor will find it necessary so to dissent or to act in opposition to the advice given to him are in normal circumstances likely to be numerous; and certainly they will not be, as some appear to think, of daily occurrence. We leave for later consideration[1] the list of the special responsibilities themselves and the manner in which they are defined; but, if we have rightly appreciated their place in the constitution, it appears to us undesirable to seek to define them with meticulous accuracy, though we consider that their general scope and purpose should be set out with sufficient precision.

'Special Responsibilities' should not be meticulously defined

40. DEBATE IN INDIAN LEGISLATIVE ASSEMBLY ON REPORT OF JOINT PARLIAMENTARY COMMITTEE, 1935.

[On February 4, 1935, Sir N N Sircar, Law Member in the Governor-General's Executive Council, moved: "That the Report of the Joint Committee on Indian Constitutional Reforms be taken into consideration". The following amendment moved on behalf of the Congress Party was rejected (Ayes—61, Noes 72) "This Assembly is of opinion that the proposed scheme of Constitution for the Government of India is conceived in a spirit of imperialist domination and economic exploitation and transfers no real power to the people of India and that the acceptance of such a constitution will retard instead of furthering the political and economic progress of India and recommends to the Governor-General in Council to advise His Majesty's Government not to proceed with any legislation based on the said scheme". Mr. Jinnah moved another amendment consisting of three parts·

Congress view

Jinnah's view

"1. That this Assembly accepts the Communal Award, so far as it goes, until a substitute is agreed upon by the various communities concerned.

2. As regards the Scheme of Provincial Governments, this House is of opinion that it is most unsatisfactory and disappointing, inasmuch as it includes various objectionable features, particularly the establishment of Second Chambers, the extraordinary and special powers of the Governors, provisions relating to Police rules, Secret Service and Intelligence Departments, which render the real control and responsibility *of the Executive and Lagislature ineffective and, therefore,*

[1] See paras 78-84 of the *Report.*

unless the objectionable features are removed, it will not satisfy any section of Indian opinion.

3 With respect to the scheme of the Central Government, called "All-India Federation", this House is clearly of opinion that it is fundamentally bad and totally unacceptable to the people of British India and, therefore, recommends to the Government of India to advise His Majesty's Government not to proceed with any legislation based on this scheme and urges that immediate efforts should be made to consider how best to establish in British India alone a real and complete responsible government and with that view take steps to review the whole position in consultation with Indian opinion without delay".

To the first part the Congress Party moved the following amendment· "As regards the Communal Award, this Assembly deems it most conducive to national harmony and to a solution by mutual agreement of the problems involved that it should refrain from expressing any opinion at the present juncture either accepting or rejecting the Communal Award" This amendment was negatived (Ayes—44, Noes—84). The first part of Mr Jinnah's amendment was then adopted (Ayes—88, Noes—15); the Congress Party remained neutral.

The second and third parts of Mr Jinnah's amendment were adopted with the support of the Congress Party (Ayes—74, Noes—58)]

I. Speech of Bhulabhai J. Desai[1], February 4, 1935.

Religion and politics

....I hold that religion should have the last place in creating any diversity in the matter of Nationality. I have always held, Sir, with a faith which nothing has shaken, that religion is a matter between man and God, and that it cannot be debased for purposes of the division of spoils of a mundane nature,....and that if religion is ever used for the purpose of dividing man from man, dividing Indian from Indian, in order only that political domination may be maintained, sustained or confirmed, I hope and trust that every single Indian present here, whatever may be his faith or creed, will give a unanimous lie to that proposition, and that he will not allow himself to be, or used as an instrument....

[1] Leader of the Congress Party in the Assembly

of our own subjection. It is for this reason, Sir, that the Congress has taken up the attitude that it has done towards the......Communal Award...... I am quite certain that, apart from any question of just and adequate protection of minorities, no difference can ever possibly exist between the political or economic interests either of a Hindu or of a Mussalman, a Sikh or a Christian, a Parsi or a Buddhist. ....I stand up before this House, therefore, to say that, in so far as that communal decision is concerned, the position that we take is the only tenable position inasmuch as we claim that we do not look at this issue from the point of view of a section of the people who profess one religion rather than another. We look upon it, we choose to look upon it from a broad national point of view....Let us, therefore, not dispute before we acquire....Sir, we begin to dispute about the distribution of what we have not! Shall we not place the acquisition first and the distribution next....?

Justification of Congress attitude towards Communal Award

"Acquisition first and distribution next"

Coming, Sir, to the next part of the amendments ...., there at all events all controversy seems to have been laid at rest. The Honourable the Mover[1] said....that there is little or no difference between the position for which I stand and the position of my friend, Mr. Mahomed Ali Jinnah....all of us are agreed for one reason or another and on one ground or another, for more or for less, that the Constitution, as offered, is not acceptable to the bulk of the people of India if not to the entire population of India.

Constitution not acceptable to people of India

We are....no longer in a stage of tutelage, no longer in a stage of spoon-feeding, no longer in a stage where we admit that we shall go step by step and very often two steps backwards and, therefore, we shall never move forwards at all. Therefore it is, that the first test which I shall bring to bear ....is the test of the reality and the integrity of

[1] Sir N. N. Sircar.

Two tests to be applied to proposed constitution

Attitude of Princes to Federal Scheme

Criticism of Federal Scheme

the Constitution as a whole. The second test which ......I shall apply is whether there is any real transference of power to the representatives of the people....Taking the two tests, Sir, I begin with what is called the Central Federation that is proposed......I do not propose to refer, except perhaps just in passing, to the part that the Indian Princes will share in the making of the Federation.... It appears....that the Princes do not seem to be very much impressed with the utility of this Federation. They say, irrespective of their own advantage or disadvantage, the British Indian does not seem to look upon them as convenient or adequate partners of such a nature that we can be clubbed together They seem to think that there is a necessary inconsistency between an absolute monarchy or, in the Greek sense, despotism which they represent and the progressive State which British India must necessarily represent However, we leave them to their judgments. .. After all, there are five aspects of every Government worth the name: (*a*) The right of external and internal defence and all measures for that purpose; (*b*) the right to control our external relations; (*c*) the right to control our currency and exchange; (*d*) the right to control our fiscal policy; and (*e*) the day to day administration of the land ......Looking at it in that outline, by a single stroke of the pen, call it reserved subjects or by any other name, what is it that is taken away and what is it that is left? You shall have nothing to do with external affairs You shall have nothing to do with defence. You shall have nothing to do.... with your currency and exchange, for, indeed, the Reserve Bank Bill just passed has a further reservation in the Constitution that no legislation may be undertaken with a view to substantially alter the provisions of that Act except with the consent of the Governor-General It also appears from the Bill, as it is drafted, that our greatest national asset, to wit, the State Railways of India, are going almost to share a similar fate, in so far as we have or can

exercise any authority or power of control. That leaves us still with the "discretionary powers", the "special responsibilities", the veto which exists as a representative of the Crown, but more than that, the positive power of individual personal legislation, the positive power of enthroning himself on the very throne of India itself as an absolute and sole dictator This is the Central Constitution. Added to that, you have two chambers, including elements which time does not permit me to examine in detail. The fact, therefore, remains that there is no real power conferred in the Centre. With what sense of responsibility, with what sense of honour and with what sense of self-respect and with what hope we could look forward to the future under such a Constitution?..

"There is no real power conferred in the Centre".

Coming to the Provinces, ... there is little to choose between the two. India, I think it is confessed even by those who sit on the other side, has reached the uttermost capacity of taxation. Therefore, there is no more money to be found, and yet we are told, that for this great and honoured institution that is coming into being, we shall have to find some 20 crores more for the purpose of feeding this white elephant; and, added to that, when all the sources of revenue have dried up, you say we have responsible Ministers. They will all be elected from among the elected representatives, but you put the Indians into this unfortunate and difficult position, that they are between the devil and the deep sea . . . between the extraordinary powers placed in the hands of the Governor on the one hand and the great Services . . . ., the Services who ought to be their ministerial subordinates but who are going to have a back-door influence against those under whom they are going to serve; between the protected Services . . . and the unprotected Governor with all his powers, and with no money and resources at his disposal for any nation-building purposes. Why offer this mockery of what is called provincial autonomy? . . . .

Criticism of Provincial Scheme

"Unfortunate and difficult position" of Provincial Minister

II. Speech of Mr. M. A. Jinnah, February 7, 1935.

Muslims not satisfied with Communal Award

Why Communal Award is accepted

Communal Award involves a political, not a religious, problem.

Definition of 'Minority'

. . . . My amendment accepts the Communal Award,—and, remember, until when, until a substitute is agreed upon between the communities concerned. Now, it may be that our Hindu friends are not satisfied with the Communal Award, but at the same time I can also tell the House that my Muhammadan friends are not satisfied with it either, because it does not meet their full demand. And, speaking for myself, personally, I am not satisfied with the Communal Award, and, again, speaking as an individual, my self-respect will never be satisfied until we produce our own scheme . . . . I accept it, because we have done everything we could so far to come to a settlement, though, so far, we have not been able to come to a settlement, and, therefore, whether I like it or whether I do not like it, I accept it, because unless I accept that, no scheme of Constitution is possible. Therefore, please stop this talk of rejection now For the time being let it stand. I entirely reciprocate every sentiment which the Honourable the Leader of the Opposition[1] expressed, and I agree with him, that religion should not be allowed to come into politics. . . but I ask him to consider this,—is this a question of religion purely ? . . . No sir, this is a question of minorities and it is a political issue . . . Now, what are the minorities ? Minorities mean a combination of things. It may be that a minority has a different religion from the other citizens of a country. Their language may be different, their race may be different, their culture may be different, and the combination of all these various elements—religion, culture, race, language, art, music and so forth makes the minority a separate entity in the State, and that separate entity as an entity wants safeguards. Surely, therefore, we must face this question as a political problem, we must solve it and not evade it.

[1] Mr. Bhulabhai J. Desai.

Question of acquisition and distribution

Then, my Honourable friend[1] laid down the proposition, acquisition first, and distribution afterwards . . . . This is not a question of acquisition and distribution. It is not that we are acquiring some land, it is not that we are going to enter upon a venture and then we share or distribute the spoils. But, may I know, if that proposition is correct, why did Mahatma Gandhi fast to death and come to an agreement with the sanction and concurrence of all leaders from India and arrive at the Poona Pact as regards the Depressed Classes? Why were they not told, acquisition first and distribution afterwards?

Criticism of Federal Scheme

. . . . I object to the Central Scheme first. Take your own words, Sir[2], ... This is what you said, "The scheme is wholly unnatural, artificial and unknown to any Constitution". I would add to that—it is devoid of all basic and essential elements and the fundamental requirements which are necessary to form any Federation. My second ground is that it proposes the entry of the Princes on terms and conditions laid down by them as *sine qua non* and as conditions precedent, and which are, on the face of them, most detrimental to the vital interests of British India . . . I am not against the Princes . . . . I am for British India . . . I say . . . that I do not preclude myself from considering any alternative scheme of all-India Federation which I think is in the interests of British India, and I shall be only too glad if I am satisfied that it is good to accept it . . . . . having regard to these impossible terms which the Princes have laid down, it is impossible to construct any kind of Federation worth its name........

Position of Princes in Federal Scheme

. . . . . No consent of the Provinces has been obtained, whether they are willing to federate as federating units on the terms which are laid down by the Princes or by the British Government. My

[1] Mr. Bhulabhai J. Desai

[2] Sir Abdur Rahim, President of the Assembly.

Federal Scheme unworkable

next objection is that it is not workable. It does not really satisfy anybody and it certainly does not satisfy the minimum demand of anybody. It is not workable Believe me, it will lead us to nothing but bitterness and illwill, nothing but wrangles in the so-called Federal Legislature. I appeal to the Princes to consider whether they are prepared to draw the chestnuts out of the fire. I appeal to the Princes also—is this the responsibility which they laid down for the Centre and on which condition they were prepared to come into the Federation? . . . . . Here, there are **98** per cent. of the safeguards and two per cent. of responsibility ! . . . .

Safeguards

Now, next, what do we find about the safeguards ? . . . . Reserve Bank, Currency, Exchange —nothing doing. Railway Board—nothing doing. mortgaged to the hilt. What is left? Fiscal Autonomy Convention. Next, what is left? Defence, External Affairs—reserved. Finance—it is already mortgaged to the hilt, our Budget, and the little that may be there, what do we find? Special responsibility of the Governor-General! His powers as to the Budget, and the estimates, his powers as to the interference in legislation, his extraordinary powers, his special responsibility, Sir, what do they leave us? What will this Legislature do? . . . . .

No responsibility at Centre

. . . . . this idea of an All-India Federation was started as a device in order to withhold responsibility at the Centre in the British Indian Constitution. We were put on the wrong track . . . . I call upon His Majesty's Government to review the whole position in consultation with Indian opinion.

* * * *

Why Provincial Scheme should not be rejected

. . . . . so far as the provincial schemes are concerned, they are undoubtedly an advance on the present, and that is why I want to make a distinction . . . . First of all, the franchise, the enlargement of the electors and voters. Next, all the members of the Provincial Legislatures will be elected: that is an

advance. Your Cabinet in the Provinces will be of the elected members responsible to the Legislature and the Legislature will be responsible to the electorates. That frame-work of the Provincial Constitution is undoubtedly an advance. But . . . . . there are certain objectionable features . . . . . such as, the Second Chamber and the Governor's powers . . . . Therefore . . . . I cannot say I am so fundamentally opposed to it as to reject it.

Defects of Provincial Scheme

. . . . . Modify the Provincial scheme, drop the Central scheme, and review the whole position in consultation with Indian opinion with a view to establishing complete responsible government in British India.

41. INDIAN NATIONAL CONGRESS,[1] ON WHITE PAPER PROPOSALS.

I will judge the White Paper proposals in the light of four tests, namely, (1) how far the proposed new legislatures will be representative of the nation; (2) how far the powers alleged to be transferred to popular control are real in the Centre and the Provinces ; (3) what the powers proposed to be transferred in regard to the Finances are, and what additional burdens India will have to bear for the New Constitution ; and (4) whether the proposed constitution contains within itself any elements of growth and development.

'Four tests' for Reforms

It is sought to replace the bloc of officials and non-officials nominated by the Government by nominees of Indian States joining the Federation. The nominated officials and non-officials of British India cannot be said to be amenable to popular opinion but they have certainly a wider outlook and are more in contact with public opinion than any nominee of a State could be. They also feel a sense of responsibility even though it is to the British Government and

Arguments against putting nominees of Indian States in Federal Legislature

[1] Presidential Address of Rajendra Prasad, Bombay, 1934.

not to the people of India. Will the State nominees have any information about or acquaintance with events happening in British India from which the States have been in a way kept segregated? The only effect of the replacement of the nominated bloc by States' nominees will be a tightening of the British control coupled with traditions of a more autocratic rule and greater disregard of popular wishes than we are accustomed to in British India and which these nominees will bring with themselves . . . .

No justification for adding Second Chambers to Provincial Legislatures

In the provinces the nominated bloc is done away with, but several provinces like Bengal, Bihar and Orissa and the United Provinces are going to be saddled in its place with a Second Chamber, and if the trend of opinion as it is developing in England gives any indication, other provinces are probably going to follow suit under the advice of the Joint Parliamentary Committee Whatever justification there may be for a Second Chamber in the Federal Legislature, there is none whatever for it in a subordinate legislature like that of the provinces. Besides, there is no justification for the extra expenditure involved in setting up and maintaining those Second Chambers Nor does the experience of the working of the Montford Reforms lend any support in their favour even in the provinces which may be said to be radical or very progressive

Reserved Subjects

Now, no constitution can be said to confer Self-Government or Responsible Government or Dominion Status, much less complete independence, which reserves to the Governor-General and refuses to transfer to Ministers under the control of a popular legislature, the administration of Defence, Foreign Affairs and Ecclesiastical Departments. But leaving this alone, which the White Paper frankly reserves, let us consider the Departments it professes to transfer. In regard to these also, it is clearly laid down that the Governor-General will not be guided by the advice of Ministers, if so to be guided would infringe on what are called the Reserved Departments, his

'Special Responsibilities' and discretionary powers of the Governor-General

special responsibilities and I may add also his discretionary powers. These are couched in such general terms that there are hardly any measures which the Governor-General could not hold up or prevent, if he considered it necessary to do so, in his wisdom, which will be the final arbiter in the matter. These special responsibilities are so vague and widespread that they may be said to pervade all departments

Unreality of Provincial Autonomy

It is not inconceivable that the most innocent action taken by a Minister not in favour with the Governor-General or the Governor, and in this respect the powers of both are identical for all practical purposes within their respective spheres, could easily be regarded as infringing upon his special responsibility in respect of one or other of the seven heads into which it is divided. The much-advertised autonomy of the Provinces really gives more autonomy to the Governor than to the people or the Minister and enables the Governor-General to have his orders executed in spite of the Ministers even when they may happen to deal with a matter falling within the scope of the latter if only the Governor or the Governor-General decides that it infringes on the special responsibility of the one or the other.

Enumeration of 'Special Responsibilities' of Governor-General

Special responsibilities are laid down under seven heads for the Governor-General. They are: (1) the prevention of grave menace to the peace or tranquillity of India or any part thereof, (2) safeguarding of the financial responsibility and credit of the Federation; (3) the safeguarding of the legitimate interests of minorities; (4) the securing to the members of the Public Services of any right provided for them by the Constitution Act and the safeguarding of their legitimate rights; (5) the prevention of commercial discrimination; (6) the protection of the rights of Indian States; and (7) any matter which affects the administration of any department under the direction and control of the Governor-General, the Governor-General being empowered in each case to determine whether any special responsibility is involved

in any given circumstance. The same powers are given "mutatis mutandis" to the Governor in so far as they are applicable to provinces. The first practically takes away with one hand what it purports to give with the other, law and order, though said to be transferred in the provinces, are thus kept quite safe within the double lock of special responsibility of the Governor-General and the Governor. The elasticity of this phrase is quite well known in this country and I am using no language of exaggeration if I say that it is mere camouflage and a fraud to say that law and order are being transferred when the special responsibility in this respect is reserved in the wide and all-pervasive terms as is done under the White Paper proposal

Law and Order

As regards the second, admittedly, definition of this responsibility is drawn in wide terms and enables the Governor-General to step in whenever any proposal of the Minister regarding budgeting or borrowing is considered by him as prejudicing or endangering India's credit in the money market of the world. Past experience has shown that financial stability and credit of India are synonymous with British profit at the expense of India, and British interests have been served so often and so brazen-facedly in the name of India's stability and credit that no Indian is likely to be deceived by words which connote more than their ordinary dictionary meaning The entire currency and exchange policy of the Government is said to be dictated by these considerations and we know it to our cost how a stroke of the pen or an apparently innocent notification of the Government has the effect of transferring crores from the hands of Indians to those of the British without the former realising it.

Governor-General's control over finances

Indian interests subordinated to British interests

The third will, of course, come very handy in turning many an awkward corner. Our Muslim brethren and others who are in a minority are apt to run away with the idea that the British Government is reserving special responsibility to safeguard

Protection of Minorities

their interest. Really speaking, if there is anything more calculated than another to keep all the communities warring with each other, it is this. Besides, it is a delusion to think that the safeguards are devised to serve any of the Indian minorities. They will find in actual working that after all, in all matters of moment, it is not they who are meant but the small microscopic minority of those birds of passage who come from thousands of miles and make hay while the sun shines and then disappear in the evening of their days to enjoy the fruits in their native land again

European interests to be served in the name of minority interests

The fourth destroys whatever is yet left of autonomy We shall indeed be masters in our own house without having the power to order our servants about, to whom we shall be bound to pay their unbearably high salaries, guarantee their pensions and leave and promotion and what not It will be easy enough for these so-called Civil Servants to set at naught not only the policy, decisions and orders of their so-called superiors—the Ministers, but to create deadlocks which will be set down to the discredit of Indians who will be branded as incompetent and inexperienced Ministers to whom it was a mistake, it will be said, to transfer powers.

Public Services

Peculiar position of civil servants

In the name of preventing commercial discrimination against the British, it is really ensured that the Indian should be discriminated against in the future as he has been in the past......

Prevention of commercial discrimination

As regards the Indian States, we have already had illustrations how activities of their subjects in favour of constitutional reforms can be throttled and the special responsibility of the Governor-General or the Governor in this respect will be used for preventing the virus of democracy from spreading into these States

Protection of Indian States

So much for special responsibilities. The discriminatory powers of the Governor-General and the Governors are of a most drastic kind. Under the

'Discriminatory powers' of Governor-General and Governors

existing Constitution, the Governor has the power of certification and veto, but under the proposal embodied in the White Paper, he can also send message to the legislature not to proceed with a certain measure of legislation as also to proceed in a certain way; not to pass certain laws as also to pass certain others or that a particular measure must be passed by a particular date and in the event of the legislature refusing or failing to obey his command, it will become a Governor-General's or Governor's Act which will have the force of an Act of legislature without having the odium attached to the name of "ordinance" and without the fetters of a limited duration, which an ordinance has. These proposals place India under a virtual dictatorship Mr. Churchill described the position admirably in another context:

Legislation

Churchill on Viceroy's dictatorship

"The Viceroy or Governor-General was armed with all the powers of a Hitler or a Mussolini. By a stroke of pen, he could scatter the constitution and decree any law to be passed or martial law, which was no law at all. Of all these he was the sole judge. Such a functionary was a dictator and he had a very powerful army"

Governors' legislative powers increased

All this power is given not only to the Governor-General, but even to Provincial Governors who are, for the first time, to be invested with powers to pass Ordinances and Governor's Acts and all other powers within their spheres which the Governor-General possesses in respect of the country as a whole.

Finance

Non-votable expenditure

When we come to consider the question of finance, the illusory nature of the so-called reforms becomes still more apparent It has been calculated that 80 per cent. of the Central revenue in the Central Government will be eaten up by Army expenditure, Debt service, guaranteed pays, pensions and allowances, which will be outside the vote of the Assembly, and the remaining 20 per cent, with which

alone the Minister, supposed to be responsible to the legislature, could play, would be subject to a vote of the upper chamber which could bring it before a joint session of both chambers for final determination. Further, if the Governor-General regards the demand for grants by the Minister under any head inadequate for the discharge of his special responsibility, he may include any additional amount which he regards necessary for the discharge of such special responsibility and the legislature will not be at liberty to vote on the same. Thus it is apparent that the control of the Ministry over the public purse is practically nil in the Centre.

Special powers of Governor-General

There is no provision for any automatic growth or development in the constitution Everything does and will continue to depend on the sweet will and pleasure of the British Parliament. There is no pretence at self-determination and even the Federation, which is to come after fulfilment of so many conditions precedent, can come only after a second vote of the Houses of Parliament.

No provision for 'automatic growth or development'

And what is this Federation ? It is a kind of federation which has no parallel in history. In it the rulers of one-third of India will be called in to counteract through their nominees the progressive elected elements of the remaining two-thirds. There is absolutely no mutuality in any respect; the Princes' nominees will have equal rights with the elected representatives of British India to interfere with the administration of British India without British Indian representatives having any the least voice in the administration of the States, which will continue their autocratic rule without so much as even declaring or guaranteeing the elementary, fundamental rights of citizenship, which are or rather ought to be the basis and foundation of any allegiance which the people may be required to bear to the State. In other words, it will be a kind of federation in which unabashed autocracy will sit entrenched in one-third of India and peep in every now and then to strangle popular will

'No mutuality' between British Indian Provinces and Indian States

Combination of 'unabashed autocracy' with popular will

in the remaining two-thirds. But the Princes themselves will be more helpless than they are now and will soon realise the effect of a federation which is conceived to keep them free from the baneful interference of British India people but nonetheless subservient to the Viceroy.

42. SIR SAMUEL HOARE ON GOVERNMENT OF INDIA BILL[1], 1935.

Complication of All-India Federation

I will begin with the first chapter of the Bill, the chapter dealing with All-India Federation. Any Federal Government is bound to be more complicated than a unitary Government, and in the case of an All-India Federation there is the additional complication due to the fact that the units are as different as the Indian States are from the British India Provinces Those complications react upon almost every clause in the Federal chapter They react, for instance, upon the provisions as to how the Federation is to be formed, for it is obvious that the Princes, being voluntary agents, can only enter of their own volition. They react, again, upon the kind of executive and the kind of legislature that is proposed, each side of the Federation obviously demanding adequate representation both in the Government and in the Federal Legislature They react, again, upon the relations between the two Federal Chambers, the Princes, from the first, attaching the greatest possible importance to the Chambers having equal powers They react, further, upon the list of federal subjects, the Princes, again, rightly insisting that, apart from the functions of Government which they surrender to the Federation, there should be no interference in their internal sovereignty. These complications make a formidable list of difficulties, but I would ask the House to observe, first of all, that 9 out of 10 members in this House, indeed I believe 99 out of 100 members, regard All-India Federation as our

(i) Indian States

(ii) Executive

(iii) Legislature

(iv) List of Federal subjects

[1] House of Commons, February 6, 1935.

objective, whether immediate or ultimate; and, secondly, that all these difficulties which I have just enumerated are inherent in an All-India Federation, whether it comes about under this Bill or whether it comes about this year, or next year, or under another Bill in 20 years' time

General agreement about necessity of Federation

That being so, I claim that the differences that will arise in our discussions on the federal chapter will be differences of method rather than differences of principle For instance, should the Bill include a federal chapter as well as a Provincial chapter, that is to say, should the Federation come under the same Bill as Provincial Autonomy? That is a question of method and not a question of principle Secondly, is the kind of federal machinery the best kind of federal machinery in the circumstances? Hon and right hon. Gentlemen opposite made alternative proposals They were turned down by the Committee, and I think on very good grounds, but I imagine they will raise their alternatives again in our discussions Thirdly, should the method of election for the Federal Legislature be direct or indirect election? That is a question which, I know, interests intensely a certain section in this House The Committee weighed the arguments on both sides and found that there were very serious objections in either course. None the less they came to the view that in the circumstances indirect election was the wiser plan, and that indirect election, or any method of election, is bound to be in the nature of an experiment

Questions of detail relating to Federation which may lead to disagreement about methods etc

Direct or indirect election?

I have quoted those instances to show that the character of the Federation reacts upon all the Federal organs I have said a word about the Federal Legislature and the Federal Executive. Let me now say a word about one or two other Federal organs. I do not think I need pause on the chapter dealing with the Federal Court I think everybody admits that in a Federation there must be a Federal Court for the purpose of interpreting the constitution

Federal Court

and I believe myself that when we come to that chapter we shall find little or no difference among any hon. Members on that point. There are, however, two other Federal organs upon which I might say a word by way of illustration, the Reserve Bank and the Railway Board. The proposals for a reserve bank and a railway board are in each case the result of a long and expert investigation, and on the whole I think they are workable proposals......My own view is......that the Reserve Bank and the Railway Board, if they are to fulfil the purpose which we desire them to fulfil, must be kept as independent as possible from political management and political interference I have quoted these instances from the Federal Chapter, not to suggest that the provisions of the Federation are either simple or uncontroversial—they are neither—but rather to suggest to hon. Members that the issues of major controversy are limited in number.

Reserve Bank and Railway Board

I pass to the next chapter—the Provincial Chapter. It is a long one comprising many clauses, but if hon. Members will read it they will see that the greater part is little more than a repetition of the Federal Chapter. I think that three clauses out of four are almost identical with the clauses in the Federal Chapter. We might have dealt with this chapter by means of cross references to the Federal Chapter. On the whole, I think we were wise in taking the other course. We felt it was much fairer to the Provinces to receive their constitutions in this part of the Bill, so that they should see their constitutions set out in self-contained provisions and at length. Similarly, I felt, from a good deal of experience in this House, that, though the large number of clauses might look very formidable, hon. Members would greatly prefer to see the whole story set out simple and in detail, rather than have to search about by cross references to other parts of the Bill.

Provincial Government

So far as the substance of this chapter is concerned, I do not believe that we shall find many

issues to divide us So far as I am aware, every Member in this House, wherever he sits, has admitted the need for provincial autonomy. The question that will divide some of us will be this: Is it possible to have provincial autonomy without the transfer of law and order ? My friends and I—and we are supported by the overwhelming majority of the Joint Select Committee—take the very definite view that it is quite impossible to give further and real responsibility to the Provinces without making the transfer of law and order, and that being so, the question arises for the House to consider, assuming that law and order are transferred, is the plan set out in the Bill the best plan to safeguard the morale, the organisation and secret intelligence of the police ?

Provincial Autonomy

Law and Order

There is another question which, no doubt, will be raised on this chapter. It is a question which very much interests right hon. and hon Members opposite: should there or should there not be second chambers in the Provinces ? The House will observe that, in accordance with the Committee's recommendation, we are proposing an addition of second chambers, over and above what were proposed in the White Paper, in the Provinces of Madras and Bombay. I think we shall find, when we come to discuss the question of second chambers in the Provinces, that there is good ground for that recommendation, and that the view of the Joint Select Committee is a wise view, namely, that wherever second chambers can be effectively set up in the Provinces, they should, generally speaking, be set up. Apart from those two questions—I am coming later on to the question of special responsibilities—I myself do not see other major issues of controversy in the Provincial Chapter

Second Chambers in Provinces

I pass now to a number of provisions which concern both the Federation and the Provinces, and I begin with the provision concerned with the reserved Departments and the special responsibilities of the Viceroy and the Provincial Governors. Here, at

'Special Responsibilities'

least, it might be thought that there would be wide difference in principle between one section of the House and another. Yet it is a significant fact that during all these last four or five years of discussion, first of all with Indians at the Round Table Conference, and, secondly, in the Joint Select Committee, there has been a surprising measure not of disagreement but of agreement There has been, for instance, general agreement from the very beginning of our discussions that, in the circumstances of India, defence must be a reserved department. Upon the reservation of defence, it almost inevitably follows also that the Department of External Affairs being so closely connected with defence, must also be reserved The point of difference, therefore, has not been the reservation of the Department of Defence, but whether it is or is not possible to put a time limit to that reservation. Is it possible in a Bill to set out a time-table under which, in progressive stages, the Indian Army is Indianised? We have discussed that question over and over again While we have every desire to help India along the road of responsibility, we see no means of including in any Bill conditions over which this House, and no other House, has really any control But, no doubt, we shall hear more of that question when we come to discuss the Chapter on Defence.

Defence

External Affairs

Question of time limit

Passing to the special responsibilities, there, again, we have behind our proposals a really remarkable measure of agreement. From the very start of our discussions there has been a general admission that over a certain field of government certain special powers of intervention are inevitable in the present condition of India. Indeed, there has been very little difference of opinion even over the extent of this special field of administration, this special field of government, perhaps, I should rather say. The difference which has arisen has not been so much as to whether there should be this field of special responsibilities or not, whether there should be a certain scope or not, but rather over the definition

Definition of 'Special Responsibilities'

of the special responsibilities. Should they be defined more precisely in certain respects as we define them in the Bill? On the other hand, in certain circumstances should the special powers of intervention be dealt with by powers of a more general character?

I will take one of these special responsibilities as an instance of what I am trying to explain to the House. I will take the special responsibility connected with the question which I know is in the minds of many hon. Members here, and in the minds of many of our friends in India, that is commercial discrimination. It has been admitted, I think, by everyone that some safeguard is necessary in the circumstances. The representatives of the Labour Party on the Committee took the view that a general power in the Governor-General to refuse his sanction to the introduction of a Bill involving unfair discrimination was sufficient The majority of the Committee held, however, that it was necessary to be more precise if the Governor-General and Indian Ministers were not to be left in a state of dangerous obscurity.

Commercial discrimination

Accordingly, the Bill, following the recommendations of the Committee, defines the safeguards under two main headings, first of all, reciprocity of treatment for British and Indian traders and companies, and, secondly the power of intervention if Indian tariffs were to be used, not in the economic interests of India, but with the object of injuring the interests of the United Kingdom The spirit in which those provisions are to be applied will be fully explained in the Instrument of Instructions. All that I need say at present is that so far as tariffs are concerned our intention is substantially to continue the same fiscal autonomy that has existed in India for the last 14 years. British imports into India will, I am convinced, receive the same consideration as under the present convention. The powers taken in the Bill, if they ever have to be

Safeguards for British trade

Fiscal Autonomy of India

used, will, I am satisfied, be adequate. When we come to the detailed discussion of this very important question, we shall see whether there is any responsible Member in any part of the House who will propose the abrogation of fiscal autonomy I can only say that every Government since the Montagu-Chelmsford Reforms has accepted the Fiscal Autonomy Convention, and that no Member of any of those Governments, so far as I know, has hitherto proposed its abrogation. I am not surprised. The surest way to destroy British trade in India is to attempt to impose upon India a tariff from Great Britain. It was this policy which lost us the American Colonies. Was not Chatham right in resisting North's attempts to impose a fiscal policy from Great Britain ?

'Services'

There are three more chapters in the Bill connected both with the Federation and the Provinces, about which I want to make a few observations There is the Chapter upon the Services, a very long Chapter of about 40 clauses This might seem a very formidable undertaking, but when hon. Members come to study it they will find that substantially it does no more than set out in statutory form the long series of rules connected with Services which now only appear as administrative orders. There is scracely a proposal in this long Chapter that is new, there is scarcely a proposal that is not already in those administrative orders. There will be two issues that the House will no doubt wish to discuss, and the first is whether the majority of the Committee and the Government in the provisions of the Bill are taking the wisest course as to recruitment The Bill proposes very briefly to continue recruitment on its present lines. The Committee studied the question in very great detail and came to the conclusion, which I think was a very wise conclusion, that it was all-important in view of the very difficult task with these great reforms coming into being, to do nothing to disturb the Services or to increase the anxiety

Method of recruitment

of men, Indian as well as British—because this is not simply a British issue—upon whose shoulders will depend so much the success of the Bill.

Pensions

Secondly, there is the further question connected with the services that I know has interested, and rightly interested, many hon. Members, that is the question of pensions. Here again the Bill accepts the Committee's very careful conclusions. In their and our view, no pensioner need feel anxious as to the security in future of his pension. Moreover, so far as the family pension funds are concerned, the Bill, following the Committee's recommendation, offers the beneficiaries the choice between letting the money stay in India or having it transferred to trustees in London in the near future. Apart from those two questions I do not believe that we shall find this long Chapter on the Services a controversial Chapter

Judicature

Then there is the very important Chapter upon the Judicature—the Chapter on the High Courts, the subordinate courts, and the subordinate judiciary It is an all-important Chapter which I believe we shall find to be almost uncontroversial It was the aim of the Committee, and it has been the aim of the Government in making the proposals dealing with this all-important question to achieve the objective of keeping the judicature, superior and subordinate, free and independent of political influence. I believe it will be found that we have been not unsuccessful in achieving that objective.

Finance

Lastly I come to a Chapter of the very greatest importance in its reactions both on the Federal Government and on the provincial Governments, and that is the Chapter on Finance. It is a Chapter that is fundamental to the whole scheme. It is bound to be a very complicated Chapter. The financial relations between the Federal Government and the Provinces are bound to be complicated. Apart from the financial obligation which has grown up between

India and Great Britain it will be seen that, however one may attempt to deal with finance, the attempt must give rise to a good many complex feelings. I imagine, however, that, apart from the technical issues, the main question will be this: Can India afford the proposed Reforms? Can it pay both for Federation and for Autonomy in the Provinces at the same time? These questions we must fully discuss, and I hope that we shall discuss them dispassionately and without exaggeration.

Can India pay for Reforms?

Cost of Reforms

Let me at this stage make three preliminary observations. First of all, the actual cost of the new federal machinery is estimated at only £500,000 a year and the actual cost of the new Provincial machinery at a similar amount Secondly, the rest of the burden will be thrown on the Central Budget, of about £4,000,000 a year; namely, about 4 per cent. of the Government of India revenue, does not represent new expenditure and is in no sense expenditure attributable to the constitutional proposals, but represents the transfer to the Centre of a burden which would otherwise have rested on the shoulders of Burma and certain of the Provinces Thirdly, Indian finances react very quickly to more favourable conditions. No better instance can be found than our experience during the last three or four years in which we have seen Indian budgets and Indian credit rapidly improving in the most remarkable manner. With this experience behind us, and the fact that this sum amounts to only a small percentage of Indian revenues, we need not, I think, take a pessimistic view about the financial basis of the scheme.

Soundness of financial basis of Reforms

Instruments of Instructions

Lastly there are certain proposals which concern equally all parts of the Bill, the Federal Chapter, the Provincial Chapter, and the Burma Chapter alike. They are connected with the Instruments of Instructions that will be issued to the Viceroy and the Governors as to the sprit in which

they are to carry out their duties under the Act. Constitutional experts will remember the part the Instruments of Instructions have played in other parts of the Empire In the case of India they are of peculiar importance. Where the situation is as complicated as this situation is, it is essential that the Viceroy and the Governors should be given clear instructions as to the spirit in which they are to carry out their duties. It is equally important from the point of view of Indians, because in the nature of things this constitution is a rigid constitution, and it can only be amended by future Acts of Parliament. It is rigid because of the peculiar conditions prevalent in India and because Parliament here would not be prepared to abandon its oversight of future charges. Into this constitution it is, however, possible to introduce an element of growth and flexibility by means of the Instructions. The Instructions therefore will obviously play a very important part in the development of the constitution. That being so, we are proposing to adopt the procedure recommended by the Committee that, for the first time in our history, the Draft Instructions should receive the Parliamentary sanction of both Houses. We feel that they will be of such importance, both from the British and from the Indian point of view, but there ought to be Parliamentary sanction behind them. We therefore propose, at about the time that the Committee stage begins, to circulate the Draft Instructions in the form of a White Paper. At the proper time we shall have to ask both Houses to discuss them, and we shall have to obtain the Parliamentary sanction of both Houses before they are issued to the Viceroy and to the Provincial Governors.

Rigid constitution

Instruments of Instructions will introduce flexibility.

Instruments of Instructions to receive Parliamentary sanction

Let me sum up this part of my observations. I would venture to claim, first of all, that, big as the Bill appears—it has 450 clauses in all—it is nothing like so big in substance as it appears. Secondly, practically every proposal in it is the result of

Importance of the Joint Committee

four years', indeed, I might say of seven years', discussion, ending with the meticulous investigation of the Joint Select Committee, a Committee composed of Members of both Houses, who investigated every detail of it. Thirdly, the Bill follows substantially all the recommendations of the Joint Select Committee. Lastly, if my survey is a correct one, and I believe it to be correct, I think I may claim that the issues of major importance are strictly limited. This being so, I hope... ..that the House will be able to deal with it with reasonable expedition.

Controversial issues strictly limited

I come now to the third objective which, when I began my speech, I stated was in the mind of the Government. What is it that we hope to achieve when this Bill passes ? When last I addressed the House I said I believed that the majority of Indians would work the Bill, and that British-Indian relations would improve when the Bill was worked. Nothing that has happened since I spoke in December has altered my view I am aware of the volume of criticism that has met the Bill in India. I am fully aware of the recent debates in the Indian Assembly I noted in particular, and I noted with great regret, the debate upon the Supplementary Trade Agreement......

Majority of Indians will work the Bill

Indian criticism of the Bill

Attaching full importance to all this criticism, I ask the House to keep it in its proper perspective. I ask the House, first of all, to note the fact, that the main critics in India are the members of the Congress Party, the largest party in the Indian Assembly The Congress Party has always made its position clear, namely, that it will accept no proposals from this House, whether these proposals or any other proposals, whether this Bill or a Bill on the lines of the Labour Amendment[1]. They have made it quite clear that the only proposals they will accept are the proposals that might emerge from an Indian Constituent Assembly. It goes, therefore,

Position of the Congress

[1] See Document 43

without saying that Congress will be opposed to any proposals that this House is likely to make.

Provincial politicians will work the Bill

Secondly, outside the Assembly I note the fact that most of the Provincial Councils have now held discussions upon the proposals of the Committee, and I have been told that they have been very reasonable discussions on the whole. They have made one thing quite clear, namely, the Provincial politicians are prepared to work the Bill. Let us remember how great will be the part of the Provinces and the Provincial politicians in an All-India Federation. It is a very hopeful feature of the situation that the very men upon whom will depend so much the working of the future Federation are the men who seem to make it clear that the proposals are workable

Position of Princes

Thirdly, there is the significant fact that the Princes, in spite of the pressure upon them—not from me, not from the Government, but from other directions—have in no way recoiled from the position that they took up four years ago. Quite rightly, they claimed that they must see the final proposals before giving their final assent or dissent The House may, however, rest assured that there is no evidence to show that the Princes, great and small and of medium position, have altered their general attitude toward the question of an All-India Federation.

'General agreement' not available in India

These are significant facts. They confirm me further in the conviction, first of all, that the Bill will be worked, and, secondly, that neither now nor at any future time is it possible to hope for general agreement in India about any scheme. If Parliament waits for general agreement, it will wait for ever. Indeed, I go so far as to say that I do not believe that within our lifetime we shall ever get more agreement in India upon any scheme that Parliament is likely to pass than we have obtained for this scheme. The time has come for Parliament to act, and, the longer Parliament takes in acting, the

greater will be the opposition in India, and the less will be the agreement that we shall have behind our proposals.

'Irresponsibility' of Indian Legislature

Let us face realities. The real danger in India is not Congress, or Communism, or misgovernment; it is irresponsibility. As long as Indian Assemblies have no responsibility to govern, so we must expect negative criticism, and even mischievous obstruction. Has it not been the history of the British Empire that irresponsibility is the real danger to good relations between the Mother Country and its Overseas dependencies ? It was this sense of irresponsibility, carrying with it the sense of inequality of status, that was at the bottom of the trouble with the American colonies in the 18th century.

'Real Responsibility' to be introduced in Centre and Pro-

I do not take the view that, while irresponsibility is bad for men and women of British stock, it is good for men and women of Asiatic stock. I believe that, unless we introduce this element of real responsibility, both into the Central Government and into the Provincial Governments, we shall see the state of affairs going from bad to worse, we shall see these assemblies not becoming easier to deal with in the future than they have been in the past, but immensely more hostile, with a growing body of hostility from one end of the country to the other.

Question of status

The fact is that irresponsibility is to most people the outward sign of inequality of status. We in Great Britain pay very little attention to questions of status. Our position has been so fully assured in the world for many generations that we have no need to bother at all about questions of status. Not so the other countries of the world. Not so Germany in Europe to-day, not so Japan in Asia, not so our Indian fellow-subjects who, looking back over centuries of civilisation, feel as sensitive as any of the great peoples of the world to any charge of inequality of status. A move forward, therefore, on the road

to responsible government is something much more to them than a mere political reform. It is the outward and visible sign of the recognition of their status.

Why, then, do we not make this clearer in the Bill ? Why in particular do we not state it in a Preamble to the Bill ? I will tell the House why, and tell them in words which have behind them the considered judgment and the full weight of a Government statement

Why there is no Preamble?

The House will observe that the Bill, like most modern Bills, contains no Preamble. There have, it is true, been important Acts in the past, among them the Government of India Act, 1919, to which a statement of policy and intentions was prefixed. There is, however, no need for a Preamble in this case as no new pronouncement of policy or intentions is required The Preamble to the Act of 1919 was described by the Joint Committee in their report as having.

Views of Joint Committee

"Set out finally and definitely the ultimate aims of British rule in India."

The Committee, after full consideration, further asserted that

"subsequent statements of policy have added nothing to the substance of this declaration",

which they then proceeded to quote in full in their report as, in their own words,

"settling once and for all the attitude of the British Parliament and people towards the political aspirations"

of India If the Committee were justified in their statements—and the Government consider that they were fully justified—there is surely nothing to be gained by reiterating words which have settled once and for all the attitude of Parliament to the Indian problem. Moreover, in government, and above all in the government of the Indian Empire, continuity

Need for continuity of policy

of policy is of the first importance. No Government and no Parliament can treat lightly any statement issued under the authority of their predecessors. But, once the aim of a policy has been clearly determined and accepted, significance attaches not to its reiteration but to the concrete measures taken in pursuance of it. The position of the Government, therefore, is this: They stand firmly by the pledge contained in the 1919 Preamble, which it is not part of their plan to repeal, and by the interpretation put by the Viceroy in 1929, on the authority of the Government of the day, on that Preamble that:

Government 'stand firmly' on the 1919 Preamble.

"The natural issue of India's progress as there contemplated, is the attainment of Dominion Status." The declaration of 1929 was made to remove doubts which had been felt as to the meaning of the Preamble of 1919 There is, therefore, no need to enshrine in an Act words and phrases which would add nothing new to the declaration of the Preamble In saying that we stand by our pledges I include, of course, not only pledges given to British India, and to Burma as part of British India, but also our engagements with the Indian States.

Declaration of 1929

Rightly understood, the Preamble of 1919, which I repeat will stand unrepealed, is a clear statement of the purpose of the British people, and this Bill is a definite step, indeed a great stride forward towards the achievement of that purpose. It is by acts and not by words that we claim to be judged. It is clear that we can only reach the end we have plainly set before ourselves when India has succeeded in establishing the conditions upon which self-government rests, nor will its attainment be delayed by any reluctance on our part to recognise these conditions when they actually exist.

Goal to be attained when India creates conditions favourable to self-government

There are difficulties which she has to surmount, but they are difficulties inherent in the Indian problem and not of our creation. If I indicate by way of example two of them, it is not, therefore, through

any desire to magnify them but because it is useless in matters of this kind to refuse to face facts or to assume that, if facts are avoided, they will dissolve. The first and most conspicuous problem which India has to solve is her cleavages of race, caste and religion Again, until India can safely assume in much larger degree the responsibility for her own effective defence an Indian Government cannot be in the full sense of the word autonomous. These are examples of conditions which cannot be removed or altered by any provisions in any Act of Parliament or by any action on our part alone Our policy, as will be seen from this Bill and the Instructions as to the manner in which these provisions which will accompany it are to be applied, is to do all that we can by sympathetic help and co-operation to enable India to overcome these difficulties and ultimately to take her place among the fully self-governing members of the British Commonwealth of Nations. It was in this spirit that we took upon ourselves the formidable burden and responsibility of removing one of the chief obstacles to further advance by providing a 'modus vivendi' in regard to the removal of communal differences. Our desire is to lend our help in the spirit of partnership in a great enterprise which may enlist the best services which this country and India may have it in their power to give.

'Difficulties inherent in the Indian problem'

'Clevages of race, and caste and religion'

Problem of Defence

Communal Award

In Burke's well-known words:

"Plain good intentions are of no mean force in the government of mankind".

I have stated the intentions of the Government—plain, good intentions. They were the intentions of the Committee. They are, I believe, the intentions of the great majority of this House. If there are still those who impugn our motives, if there are still those who doubt our word, we are ready to be judged by our actions. And of our actions this Bill is the outward and visible sign—a Bill that has been hammered out in the face of almost overwhelming difficulties, a Bill that is the result of years of inces-

Intentions of England

Merits of the Bill

sant inquiry, a Bill that offers to India a vast and fruitful field of self-government, a Bill that holds the balance fairly and honourably between conflicting interests and competing parties, a Bill that comes in the direct line of succession to the great Imperial measures of the past. Let Indians, though they may wish for a longer and a swifter advance, mark the spirit in which we make these proposals. Let Parliament, realising the difficulties in any course of action, remembering the complexities of any scheme of Indian reform, admitting the many imperfections of any proposals, show by the majority for Second Reading and its attitude in the subsequent stages of our discussions, that it intends to act, as it has acted upon great issues of the kind in the past, with resolution and expedition no less than with caution and wisdom.

43. MR. ATTLEE[1] ON GOVERNMENT OF INDIA BILL[2], 1935.

Criticism of omission of Preamble

I welcome very much the declaration which he[3] made on behalf of the Government with regard to the object at which we are aiming in India, and that object includes Dominion Status. But I cannot understand why, if that is the mind of the Government, the statement was not made long ago. No mention was made of the subject in the earlier discussions which we had either on the White Paper or on the report of the Committee, and yet from one end of India to the other a complaint has gone out on this particular matter of the recognition of India's

[1] Mr. Attlee moved· "no legislation for the better government of India will be satisfactory which does not secure the good will and co-operation of the Indian people by recognising explicitly India's right to Dominion Status and by providing within it the means of its attainment, and which does not by its provisions as to franchise and representation secure to the workers and peasants of India the possibility of achieving by constitutional means their social and economic emancipation".

[2] House of Commons, February 6, 1935.

[3] Sir Samuel Hoare. See Document No. 42.

status. And to-day a statement is made, but the Secretary of State says: "This is just a continuation of a previous policy; we do not need to have anything in the Bill". Yet the right hon. Gentleman said, quite correctly, that Indians are very sensitive on the question of status, and that they do not take things for granted. I should have thought that it was not much use to have had long conferences with our Indian fellows if we had not grasped something of the way in which they look at things. Surely, it was a great mistake to introduce a Bill like this without any Preamble The Bill starts off with just the words.

Indian point of view overlooked by Government

"To make further provision for the government of India".

It might be any little Bill. It does not strike the imagination in the slightest degree To put it like that shows an utter disregard of Indian opinion I am surprised that the Prime Minister did not appreciate this point After all, the Prime Minister, when he was in our party, was a great authority on Indian affairs. He was mainly responsible for the declaration of Dominion Status[1] I thought that he would have appreciated the Indian point of view......A very peculiar point was put by the right hon Gentleman the Secretary of State He says, "This matter is so simple and so obvious that we are just carrying on the Preamble of the 1919 Act, and there is no need for a Preamble". He then explained that the declaration of Dominion Status was made in order to clear up doubts that had arisen. Everybody knows that doubts were cast on exactly what the Preamble meant by no less a man than the then Leader of the Government in the Assembly in India[2], and that most ingenious constructions have been put on these phrases by the right hon. Gentleman the Member for Epping (Mr. Churchill), and, surely, it would have been better to have inserted a Preamble.

MacDonald should have appreciated Indian point of view

Different interpretations of Preamble of 1919

[1] See Document No. 29.

[2] See Sir Malcolm Hailey's speech—Document No. 17.

But it is not merely a matter of saying in a Preamble that Dominion Status is the goal. Dominion Status means much more than that. It means the recognition of the right of India to Dominion Status. It means an admission that the Indians have the right to deal with their own constitutional affairs, and that is not done either by the declaration the right hon Gentleman has made or in the deeds which are embodied in this Act There is nowhere any recognition of right. We on this side hold that you must recognise, as we recognise, the right of the Indian people to self-government, and that no constitution can possibly be worked which is not accepted by Indians and which does not admit that claim. The whole object of the Round Table Conference was to bring Indians together so that we could get a settlement by Indians

Meaning of 'Dominion Status'

Labour Party's point of view

The right hon. Gentleman was extraordinarily optimistic with regard to the reception which this measure had in India. I could not see that there had been any enthusiasm whatever for this Bill in India. There was, as a matter of fact, rejection by all the live movements in India, not only by Congress and the Liberals, but by Labour and by many people classed as Moderates It is really useless to claim that this Bill is going to have some kind of support from silent opinion, or that there are a certain number of people who will probably acquiesce. You cannot make a constitution a success by mere acquiescence or by placid acceptance Therefore, we say that a Bill which does not secure the good will, acceptance and co-operation of the Indian people is not a Bill that will make for the satisfactory government of India and does not deserve the support of this House. The right hon. Gentleman made the point that the constitution to be set up will be rigid. That is quite true, and that is a complaint against it. When I had to undertake some inquiry into a constitution for India with my colleagues on the Statutory Commission[1], we came to the conclusion

Reception of the Bill in India

Acquiescence or placid acceptance cannot make a constitution successful.

Flexible constitution wanted

Mr. Attlee was a member of the Simon Commission.

that it was a mistake to have a rigid constitution, and that what was required was flexibility and growth. That does not exist in this Bill. There is no recognition of right, and there is no clear laying down of a goal and no provision of the means of attaining a goal. There is no laying down of rights because if you read the Bill, what strikes you mainly is the large number of reservations. The keynote of the Bill is mistrust. There is no trust at all India is not to have control of her foreign affairs and of her finances. Indians in the Provinces are not fit to deal with terrorism The whole note struck by the Bill throughout is not that here we start a constitution which is going to be worked by Indians, but some kind of a constitution with restrictions of every kind all the time In fact, the one thing which seems to be left out of the Bill is the Indian people.

Keynote of the Bill—mistrust

Indian people left out of the constitution

There is a most remarkable omission in the Bill, and I hope that the right hon Gentleman will correct it soon. It is the total omission of anything to say who are to be the electors. It is suggested that this will be done by an Order in Council. It is a most extraordinary thing to produce a Bill to make further provision for the government of India with no provision whatever showing who are the people who are to govern in India except the Upper House To us this is vital The right hon. Gentleman never mentioned the franchise, and that is most vital from our point of view. Our speakers have put the question of franchise over and over again. He said nothing with regard to the representation of labour All those provisions are left out We want to have the franchise provisions fully before us because we wish to put down drastic Amendments, if the franchise proposals are anything like those which have been laid down by the Joint Select Committee It is an extraordinary thing. It seems as if the political side of the whole business was something quite subordinate to the machinery. I get the idea that it must have been drafted by the Indian Government.

Electorate not defined

Specific provisions about franchise wanted by Labour Party

Criticism of British 'rulers' of India

The one thing which struck me when I was in India was the rulers of the country did not really think political matters important. Take a simple case In the Provinces we asked whether they had anything like our Parliamentary companion that would show the returns of the last election. We did not get it. There was nothing published which in any way gave the information The election took place a considerable time ago, but the Government of India are unable to give us the figures, or the candidates in that very important election.

India to be ruled by the wealthy and the privileged

The whole business on the political side is left out, and we have really a masss of machinery. In every clause throughout the Bill we find a mistrust of the Indian people. The legislature is to be overloaded with Conservative interests, landlords, commerce and the like. Second chambers are to be set up. The conclusion to which one comes on looking at the Bill is that the definite decision has been that India is to be ruled by the wealthy and the privileged. The curious thing is, that even those people are not trusted. The second chambers are to represent conservative interests, landlord, wealthy people and the like, but even they cannot be trusted with finance. Right through the Bill there is mistrust and inequality. We have heard of the idea that there is to be some kind of partnership in India. It is a one-sided partnership

One-sided partnership

Position of Princes

Let us take the first example of inequality. The constitution at the Centre depends entirely upon the adherence of the Princes. The Princes have the right to refuse to accept the Federal system, but the Indian representatives have no option. The Princes can say : "We are not coming in", but the Indian representatives may say that they dislike the constitution and may vote against it, but nothing will happen. They have no power at all. The Indians have put forward numerous proposals, but they have been turned down. Right through the Bill, with

certain exceptions, there is no mutuality. I admit that there are certain provisions with regard to the protection of Englishmen in India and of Indians over here, but on the whole the general direction is against the Indians. The Governor-General is to prevent discrimination in India, but no one is given power in this country to step in over the heads of Parliament or anybody else and prevent discrimination against Indians. We control India's foreign policy, and it is said that that must be so because we contribute to her defence by the Navy. If that be true, seeing that India contributes to the defence of the country, she ought to have a word in regard to our foreign policy. It is, however, all one-sided. We ought to allow her a word of control in our foreign policy, because she actually provides for the defence of the most vulnerable land frontier in the whole Empire.

Indian proposals turned down

India should have some control over defence and foreign policy

Take the question of constituent rights. Such as they are in the Bill, Indians may ask for alterations in 10 years. They may come to this House and ask for changes, and this House may or may not give them, but either before or after the 10 years the Government of this country, without having to ask for authority and after more consultation, may change these constituent rights. Can one wonder, on reading the provisions of the Bill, that the Indians feel an inequality of status ? It is Robinson Crusoe's ship. The hull is designed by Robinson Crusoe and at every point the Indians are very little better than Man Friday There is inequality of status running right through the Bill. Without equality of status, I do not think that we are likely to get any real acceptance or real working of the Bill by the Indians.

'Constituent rights'

'Inequality of status' for India

I do not want to go through the Bill clause by clause. We shall do that for many weary weeks. I have spoken very often on this subject, and I would only point out certain of our major objections. We

Bill contains no power of advance.

say that the Bill contains no power of advance. It does not deal with the difficulty of advance. We have suggested that there should be a time limit, and within that time India's advance should pass into India's hands. You will not get a time-table worked for if there is not a time-table in existence I am quite certain that we shall have to lay down a time-table if we want to get a move made with regard to Indianisation That is a very difficult obstacle to get over, and it is not really faced in the Bill. It is simply left, and that means that the Bill contains no seed of advance. It is recognised as only a temporary instalment given by this Government to India I held the view when I was a member of the Simon Commission, and I still hold the view, that there are very great dangers in a merely temporary constitution. It has all the disadvantages and none of the advantages of a permanent constitution

No workable time table of political

As I held then, and as my colleagues held then, you must have the seeds of advance in the Bill. That is not provided for, and I do not see that it is possible to be provided for in the Instrument of Instructions, except in a very minor degree I cannot discuss the question of representation, because the Bill does not give the basis of representation. It does not give us the franchise, but we know the franchise is not as wide as we would wish it. We say that in the Bill undue representation is given to vested interests, to land and capital, and only in a very minor degree to labour. We say that land, capital, money will get its representation anyway What we need is that the weakest members of the community, the workers, the women, the depressed classes should be given political power. The whole basis of the representation in the Bill is to make things safe for the present existing order of society.

Question of franchise

Labour wants political power for the weakest sections.

The difference between the right hon. Member for Epping (Mr. Churchill) and the regular supporters of the Government is only one of degree. The assumption on which all those hon. Members act is

Are things satisfactory in India?

that things are fairly satisfactory in India, but that we are to take the very greatest care that they do not go wrong. I say that things are most unsatisfactory in India, and that we want very big changes.

* * * *

The Bill means the retention in India of the capitalist landlord system Throughout in the Legislature, central and local, care is to be taken to see that private interests are protected. Special protection is given them so that if land is wanted for any refrom you may be met with opposition

Continuation of Capitalist landlord system

Another terrible thing in India is the permanent settlement in Bengal. This is another of the things which we gave to India, and it is difficult under this constitution to overthrow it We are setting up in India a House of Lords more powerful than our own, and I think even more reactionary in its composition. We are leaving the power of the purse. We are setting up a bank much the same as the Bank of England, and this at a time when persons of all kinds of views say that capitalism is practically done, and that we must have a new system We are introducing a rigid constitution based on capitalist principles, which is intended to preserve the features of capitalism and landlordism. That is our second great objection to the Bill. You are handing over whatever power you are giving to certain interests, there is no provision for advance, and you are failing to meet the desires of the Indians themselves.

Permanent Settlement

Defects of the Bill

We shall be told that we on this side want to go too fast, that if you hand more to the Indians, they will make a mess of it. India is in a terrible mess in any case, so is the rest of the world, and we think that it is quite impossible to get the real changes which are demanded in India by setting up a constitution which is merely acquiesced in by a certain number of people, which may be worked by a privileged class but which will not be supported by any of the advanced parties in India or any of the people

Bill not accepted by any advanced party in India

who really want a change. I can understand the attitude of hon. Members opposite. If they really believe that things are satisfactory in India they might want to fill in the Bill with every kind of provision. We do not believe they are satisfactory. We have done some good things for India, but we have done many bad things. The serious thing we have done is that we have maintained the Indian people in a position of irresponsibility. If they were irresponsible, we were responsible, and they will never learn responsibility without being given responsibility. Indians must take the responsibility for the future government of their country. The Bill does not do that, and we cannot do it, and, therefore, we oppose it.

Indians must get responsibility for future government of their country.

APPENDIX A

DOCUMENTS ON INDIAN STATES

44. MONT-FORD REPORT ON INDIAN STATES

305. . . . We wish to say that we think that the Princes should be assured in the fullest and freest manner that no constitutional changes which may take place will impair the rights, dignities, and privileges secured to them by treaties, *sanads*, and engagements, or by established practice.

Rights of Princes guaranteed

306. We have explained how, on various occasions in recent years, the Princes have met in conference at the invitation of the Viceroy. These conferences have been of great value in assisting in the formulation of the Government's policy on important matters like minority administration and succession and promoting interests in such questions as scientific agriculture and commercial and agricultural statistics. The meetings have given the princes the opportunity of informing the Government as to their sentiments and wishes, of broadening their outlook and conferring with one another, and with the Government. But although the meetings have in the last few years been regular they depend upon the invitation of the Viceroy; and our first proposal is to replace them by the institution of a Council of Princes. We wish to call into existence a permanent consultative body. There are questions which affect the States generally and other questions which are of concern either to the Empire as a whole or to British India and the States in common, upon which we conceive that the opinion of such a body would be of the utmost value. The Viceroy would refer such questions to the Council, and we should have the advantage of their considered opinion. We think it is all-important that the meetings should be regular and that ordinarily the Council should meet once a year to discuss agenda approved by the Viceroy. Any member of the Council or the Council as a whole might request the Viceroy to include in the agenda

Conferences of Princes

Proposal for establishment of a Council of Princes as a "permanent consultative body"

Procedure

any subject on which discussion was desired. If questions of sufficient importance arose in the intervals between the annual meetings the Princes might suggest to the Viceroy that an extraordinary meeting should be held. We contemplate that the Viceroy should be president and as a rule, preside, but that in his absence one of the Princes should be the Chairman. The rules of business would be framed by the Viceroy, after consultation with the Princes who might perhaps from time to time suggest modifications in the rules We believe that most of the Princes desire to see such a Council created, although some of the most eminent among them have not taken part in the conferences in 1916 and 1917. The direct transaction of business between the Government of India and any State would, of course, not be affected by the institution of the Council. We have used the name "Council of Princes" to describe the body which we desire to see instituted. We have had difficulty, however, in finding a name appropriate to such a unique assembly. We wish to avoid a designation associated with other institutions, and to find one which will connote the real position of this body of Rulers, with the representative of the King-Emperor as Chairman. From both these points of view the terms Council, or Chamber, or House of Princes, are open to criticism. There is much to be said in favour of an Indian name for an Indian body which, from the circumstances of the case, would exist nowhere else; but it would be necessary to choose one not peculiarly associated historically either with Hindus or with Mahomedans. While therefore we have adopted the term Council for temporary purposes we hope that discussion may produce some happier alternative.

Question of finding an appropriate name for Council of Princes

307. It has been represented to us that difficulties have occurred in the past by reason of the fact that the Political Department comes to decisions affecting the Native States without being in a position to avail itself of the advice of those who are

in a position to know from their personal experience or the history of their States the right course to pursue. On matters of customs and usage in particular we feel that such advice would be of great value and would help to ensure sound decisions. Our second proposal therefore is that the Council of Princes should be invited annually to appoint a small standing committee, to which the Viceroy or the Political Department might refer such matters. We need hardly say that no reference affecting any individual State would be made to the committee without the concurrence of its Ruler. The Council of Princes might appoint to the standing committee not only Princes but also Dewans or Ministers, who were willing to place their services at the disposal of the Viceroy when called upon for advice. This machinery is based on the principle of consultation which in so many matters underlies our recommendations in regard to British India.

Standing Committee of Council of Princes

308. Our next proposal is concerned with disputes which may arise between two or more States, or between a State and a Local Government or the Government of India, and with a situation caused when a State is dissatisfied with the ruling of the Government of India or the advice of any of its local representatives. In such cases there exists at the present moment no satisfactory method of obtaining an exhaustive and judicial inquiry into the issues such as might satisfy the States, particularly in cases where the Government of India itself is involved, that the issues have been considered in an independent and impartial manner. Whenever, therefore, in such cases the Viceroy felt that such an inquiry was desirable we recommend that he should appoint a commission, on which both parties would be represented, to inquire into the matter in dispute and to report its conclusions to him. If the Viceroy were unable to accept the finding the matter would be referred for decision by the Secretary of State. The commission that we have in mind would be com-

Commissions of inquiry into disputes

posed of a judicial officer of rank not lower than a High Court judge and one nominee of each of the parties concerned.

Commissions of inquiry into misconduct of Princes

309. In another class of cases we have a similar proposal to make. It has happened, and we conceive that it may happen though rarely in the future, that the question arises of depriving a Ruler of a State of his rights, dignities, and powers or of debarring from succession a member of his family. If such cases occur in the future we think that they should be always referred to a commission to be appointed by the Viceroy to advise him. It should consist of five members, including ordinarily a High Court judge and two Ruling Princes. The names of the commissioners should be intimated in advance to the defendant before they were appointed; and the proceedings of the commission should be made public only if the defendant so desired.

"All important States should be placed in direct political relations with the Government of India."

310. Our two remaining proposals bear a direct relation to our constitutional scheme for British India. We recommend that as a general principle all important States should be placed in direct political relations with the Government of India. We feel that the necessity of communicating with the Central Government through two, or even more, intermediaries is an obstruction to good understanding and a great obstacle to business. The present position is that while four large States and one small State deal directly with the Government of India through their Resident, there are in the Central India Agency some 150 States and in the Rajputana Agency some 20 States and in Beluchistan 2 States under the Agents to the Governor-General. The remaining States are in political relations with Local Governments. Madras deals with 5 States; Bombay with over 350; Bengal with 2; the United Provinces with 3; the Punjab with 34; Burma with 52; Bihar and Orissa with 26; the Central Provinces with 15; and Assam with 16. We have already laid stress in our report upon the need in domestic affairs for dividing matters of all-Indian, from those of

Existing system

provincial, concern. Now on general grounds the relations between the States and the Government are clearly a matter for the Central Government; and where this principle has been departed from it has been on grounds of history or convenience. It seems to us that the changing conditions of the time afford strong reason for affirming the principle, both because the institution of a Council of Princes will give greater solidarity to the views of the States, and also because the growth of responsibility in Provincial Governments will to some extent unfit them to act in political matters as mere agents for the Government of India. There will, we recognise, be difficulty in some cases where the territories of the States and British provinces intersect, but such obstacles are not insurmountable As a general principle, therefore, we recommend that all important States should be placed in direct political relations with the Central Government. We do not intend, of course, that the Durbars should write direct to the Political Secretary, but that there should, wherever possible, be only one political officer through whom the State would correspond with the Government of India. This is already the case with the States of Hyderabad, Baroda, Mysore and Kashmir. In other cases, it will be necessary to revise the existing arrangements by which correspondence passes through a local Political Agent or Resident to an Agent to the Governor-General or a Local Government and thence to the Government of India. Where the authority immediately subordinate to the Government of India is an Agent to the Governor-General the choice lies generally between abolishing the offices of local Political Agents or Residents, while transferring their functions to the Agent to the Governor-General, with an increased staff of assistants, and abolishing the post of Agent to the Governor-General, while retaining Residents accredited to States or groups of States. In other cases, instead of abolishing either the Agent to the Governor-General or the Resident, where both officers exist, the Residents of

On principle "the relations between the States and the Government are clearly a matter for the Central Government".

Suggested changes

particular States might be allowed to communicate direct with the Government of India, sending a copy of such communications to the Agent to the Governor-General for his information. The future position of other States which are now in relation with Provincial Governments cannot be determined immediately since both the wishes of the Durbars, and also the administrative advantages, must be considered. It may be that the Government of India will assume direct relations with these States, or that they may be left for the time being in relation with the Provincial Governments; but in the latter case it seems to us that the head of the province should in each case act in his relations with the States as agent for the Central Government, and that relations with the Native States should not be matters of provincial concern in the sense that they are intended ever to be transferred to the control of the Legislative Council.

Joint deliberation on matters of common interest

311. Out last proposal is intended to provide some means of deliberation between the Government of India and the Princes on matters of common interest to both, and so to ensure that as far as possible decisions affecting India as a whole shall be reached after the views of the Durbars have been taken into account. In the past it certainly has occasionally happened that the States were vitally affected by decisions taken without reference to them; and yet no machinery for such collective consultation with them has hitherto existed. It seems to us that they have a clear right to ask for it in the future. We have abandoned for the persent all considerations of suggestions that the Ruling Princes, or some representatives of their Order, should be members of the Council of State. Not only would this at the present stage infringe the doctrine of non-interference on the part of the Princes in the affairs of British India, but we are satisfied that few, if any, of the Princes themselves are ready for such a step. On the other hand, it seems to us that, when a Council of State and a Privy Council have been created, the machinery

Doctrine of non-interference of Princes in affairs of British India

will exist for bringing the senatorial institutions of British India into closer relations when necessary with the Rulers of the Native States. Matters affecting the Native States generally, or the Native States and British India in common, or the Empire might, as we have seen, be referred to the Council of Princes. It would thus be possible for the Viceroy, when he thought fit, to arrange for joint deliberation and discussion between the Council of State and the Council of Princes or between representatives of each body. He might also invite members of the Council of Princes to serve on committees of the Privy Council.

Suggested procedure for joint deliberation

312. With these indications of the position to be occupied by the Native States in future we may rest content. We believe that the trend of events must draw them still closer into the orbit of the Empire; we think that the process need give rise to no alarm lest their internal autonomy be threatened. We need not conceal our conviction that the processes at work in British India cannot leave the States untouched and must in time affect even those whose ideas and institutions are of the most conservative and feudal character. But in that respect there can be no intention or desire to accelerate growth by artificial means. We believe that our proposals will afford satisfaction to the progressive Rulers while respecting the legitimate desire of those less advanced to go forward at their own pace.

"Processes at work in British India cannot leave the States untouched."

45. LORD READING'S LETTER TO THE NIZAM[1], 1926.

In the paragraphs[2] which I have mentioned you state and develop the position that in respect of the internal affairs of Hyderabad, you, as Ruler of the Hyderabad State, stand on the same footing as the British Government in India in respect of the internal affairs of British India. Lest I should be thought to overstate your claims, I quote Your Exalted

Nizam's claim of complete freedom in respect of internal affairs

[1] March 27, 1926.

[2] The reference is to the Nizam's letter dated September 20, 1925.

Highness's own words: "Save and except matters relating to foreign powers and policies, the Nizams of Hyderabad have been independent in the internal affairs of their State just as much as the British Government in British India. With the reservation mentioned by me, the two parties have on all occasions acted with complete freedom and independence in all inter-Governmental questions that naturally arise from time to time between neighbours. Now, the Berar question is not and cannot be covered by that reservation. No foreign power or policy is concerned or involved in its examination, and thus the subject comes to be a controversy between the two Governments that stand on the same plane without any limitations of subordination of one to the other".

Nizam's view: Question of Berar does not involve 'foreign powers and policies'.

These words would seem to indicate a misconception of Your Exalted Highness's relations to the Paramount Power, which it is incumbent on me as His Imperial Majesty's representative to remove, since my silence on such a subject now might hereafter be interpreted as acquiescence in the propositions which you have enunciated.

Nature and basis of the supremacy of the British Crown in India

The Sovereignty of the British Crown is supreme in India, and therefore no Ruler of an Indian State can justifiably claim to negotiate with the British Government on an equal footing. Its supremacy is not based only upon treaties and engagements, but exists independently of them and, quite apart from its prerogative in matters relating to foreign powers and policies, it is the right and duty of the British Government, while scrupulously respecting all treaties and engagements with the Indian States, to preserve peace and good order throughout India. The consequences that follow are so well-known and so clearly apply no less to Your Exalted Highness than to other Rulers, that it seems hardly necessary to point them out. But if illustrations are necessary, I would remind Your Exalted Highness that the Ruler of Hyderabad along with other Rulers received in 1862 a *Sanad* declaratory of the British Government's

desire for the perpetuation of his House and Government, subject to continued loyalty to the Crown; that no succession in the *Masnad* of Hyderabad is valid unless it is recognised by His Majesty the King-Emperor; and that the British Government is the only arbiter in cases of disputed succession.

British control over succession in Indian States

The right of the British Government to intervene in the internal affairs of Indian States is another instance of the consequences necessarily involved in the supremacy of the British Crown. The British Government have indeed shown again and again that they have no desire to exercise this right without grave reason. But the internal, no less than the external, security which the Ruling Princes enjoy is due ultimately to the protecting power of the British Government, and where Imperial interests are concerned, or the general welfare of the people of a State is seriously and grievously affected by the action of its Government, it is with the Paramount Power that the ultimate responsibility of taking remedial action, if necessary, must lie. The varying degrees of internal sovereignty which the Rulers enjoy are all subject to the due exercise by the Paramount Power of this responsibility. Other illustrations could be added no less inconsistent than the foregoing with the suggestion that, except in matters relating to foreign powers and policies, the Government of Your Exalted Highness and the British Government stand on a plane of equality. But I do not think I need pursue the subject further. I will merely add that the title "Faithful Ally" which Your Exalted Highness enjoys has not the effect of putting Your Government in a category separate from that of other States under the paramountcy of the British Crown.

Right of British Government to intervene in internal affairs of Indian States

Meaning of the term "Faithful Ally"

In pursuance of your present conception of the relations between Hyderabad and the Paramount Power, you further urged that I have misdescribed the conclusion at which His Majesty's Government have arrived as a "decision" and that the doctrine of *res judicata* has been misapplied to matters in

Right of Paramount Power to pronounce "decisions" in disputes with Indian States

controversy between Hyderabad and the Government of India.

I regret that I cannot accept Your Exalted Highness's view that the orders of the Secretary of State on your representation do not amount to a decision. It is the right and privilege of the Paramount Power to decide all disputes that may arise between States, or between one of the States and itself, and even though a Court of Arbitration may be appointed in certain cases, its function is merely to offer independent advice to the Government of India, with whom the decision rests. I need not remind you that this position has been accepted by the general body of the Indian Rulers as a result of their deliberations on paragraph 308 of the Montagu-Chelmsford Report. As regards the use of the term *res judicata*, I am, of course, aware that the Government of India is not, like a Civil Court, precluded from taking cognizance of a matter which has already formed the subject of a decision, but the legal principle of *res judicata* is based on sound practical considerations, and it is obviously undesirable that a matter which has once been decided should form the subject of repeated controversies between the same parties.

Res judicata

Question of appointment of a Commission for enquiry into the Berar case

I now pass on to consider your request for the appointment of a Commission to enquire into the Berar case and submit a report. As Your Exalted Highness is aware, the Government of India not long ago made definite provision for the appointment of a Court of Arbitration in cases where a State is dissatisfied with a ruling given by the Government of India. If, however, you will refer to the document embodying the new arrangement, you will find that there is no provision for the appointment of a Court of Arbitration in any case which has been decided by His Majesty's Government, and I cannot conceive that a case like the present one, where a long controversy has been terminated by an agreement executed after full consideration and couched in terms which are free from ambiguity, would be a suitable one for submission to arbitration.

In accordance with Your Exalted Highness's request, your present letter has been submitted to His Majesty's Secretary of State, and this letter of mine in reply carries with it his authority as well as that of the Government of India.

46. CONSTITUTIONAL IMPORTANCE OF CHAMBER OF PRINCES.

I. Extracts from Report of Simon Commission.

Conferences of Princes

107. Various proposals had been made before the Montagu-Chelmsford Report to organise a system of conferences amongst the Ruling Princes of India with a view both of securing the expression of their collective opinion and of providing opportunities for counsel and consultation in matters of common concern to India as a whole. But it was not until after the publication of the Joint Report that the idea took permanent and effective shape. It is not, of course, to the Government of India Act that we must turn to find the institution of the Chamber of Princes; indeed we are not aware of any specific reference to the Indian States in the Act, though in many places "India" is referred to as distinguished from British India[1]. It was by Royal Proclamation that the Chamber of Princes was set up on 8th February, 1921. The ceremony of inauguration was performed, on behalf of the King-Emperor, by the Duke of Connaught in the Dewani-i-Am of the Moghul Palace in Delhi. The Proclamation which was read on this occasion contained the memorable passage:—

Inauguration of Chamber of Princes

King-Emperor's assurance to Princes

"In my former Proclamation I repeated the assurance given on many occasions by my Royal Predecessors and Myself, of My determination ever to maintain unimpaired the privileges, rights, and dignities of the Princes of India. The Princes may rest

[1] "India" is defined in the Interpretation Act as meaning "British India together with any territories of any Native Princes or Chiefs under the suzerainty of His Majesty exercised through the Governor-General of India or through any Governor or other officer subordinate to the Governor-General of India".

assured that this pledge remains inviolate and inviolable".

Composition of Chamber of Princes

108. The Chamber of Princes contains, in the first place, 108 Rulers of States who are members in their own right. They are Ruling Princes who enjoy permanent dynastic salutes of eleven guns or over, together with other Rulers of States who exercise such full or practically full internal powers as, in the opinion of the Viceroy, qualify them for individual admission to the Chamber. In the second place, the Chamber includes twelve additional members elected by the Rulers of 127 other States not included in the above. These representative members are chosen from among these Ruling Chiefs by a system of group voting. The Viceroy is the President of the Chamber and a Chancellor and a Pro-Chancellor are elected from among the members annually. An extremely important organ of the Chamber is its Standing Committee which consists of seven members including the Chancellor and Pro-Chancellor. The functions of the Standing Committee are to advise the Viceroy on questions referred to the Committee by him "and to propose for his consideration other questions affecting Indian States generally or which are of concern either to the States as a whole or to British India and the States in common."

Standing Committee

Powers of Chamber of Princes

109 The Chamber of Princes is a deliberative, consultative and advisory, but not an executive, body. It meets annually in its own Hall of Debate in the magnificent Council House which has recently been completed at New Delhi. Two important provisions in its constitution must be set out *verbatim*:—

Two important restrictions

"Treaties and internal affairs of individual States, rights and interests, dignities and powers, privileges and prerogatives of individual Princes and Chiefs, their States and the members of their families and the actions of individual Rulers shall not be discussed in the Chamber."

"The institution of the Chamber shall not prejudice in any way the engagements or the relations

of any State with the Viceroy or Governor-General (including the right of direct correspondence) nor shall any recommendation of the Chamber in any way prejudice the rights or restrict the freedom of action of any State".

The latter of these provisions makes plain that the establishment of the Chamber of Princes has not affected the individual relations between any Indian State and the representative of the Crown. The Viceroy is himself in charge of the Political Department of the Government of India, and this is the department which deals with matters affecting the Indian States. Following upon the recommendations of the Montagu-Chelmsford Report[1], most of the important States are now placed in direct political relations with the Central Government and this has involved the transfer, in a large number of cases, of States' relations from a Provincial Government to the Government of India. There are, however, some States that are not in direct relations with the Governor-General in Council but with the Governors in Council. Most of the important Rulers have and frequently exercise the right of direct access to and correspondence with the Viceroy. The Political Department of the Government of India is manned by officers, for the most part British, selected from the Indian Civil Service and the Indian Army. Political officers are accredited as individual Residents to the greater States. In each of the Agencies, namely, Rajputana, Central India, the Punjab States, the Western India States, the Madras States and Baluchistan there is an Agent to the Governor-General with a staff of officers, many of whom are accredited to particular States or groups of States. At the head of the Political Department is the Political Secretary who is the Viceroy's immediate adviser in affairs concerning the States.

Direct relations between States and Central Government

How relations with States are conducted

110. The establishment of the Chamber of Princes marks an important stage in the development

[1] Para 310.

Old policy of keeping the States in isolation given up by the Government of India

of relations between the Crown and the States, for it involves a definite breach in an earlier principle of policy according to which it was rather the aim of the Crown to discourage joint action and joint consultation between the Indian States and to treat each State as an isolated unit apart from its neighbours. That principle, indeed, had already been giving place to the idea of conference and co-operation amongst the Ruling Princes of India, but this later conception was not embodied in permanent shape until the Chamber of Princes was established. The Chamber has enabled free interchange of views to take place on weighty matters concerning the relationship of the States with the Crown and concerning other points of contact with British India. Notwithstanding that some States of great importance, like Hyderabad and Mysore, have stood aloof, its work during the last nine years—especially, perhaps, the work of its Standing Committee—proves that the time was ripe for advance. But this advance does not as yet cross the boundary which must be traversed before the first actual step on the road of All-India Federation can be taken.

Work done by the Chamber

We conclude this chapter by a quotation which postulates the necessary condition of further progress in this direction.

Lord Irwin's view on treaty rights of Princes

"I make no secret of my view", said Lord Irwin in June, 1929, "that in any proposals that may be made it is essential, on every ground of policy and equity, to carry the free assent of the Ruling Princes of India, and that any suggestion that the treaty rights which the Princes are accustomed to regard as sacrosanct, can be lightly set aside is only calculated to postpone the solution that we seek".

II. Extracts from Report of Butler Committee.

The Chamber of Princes was set up by the Crown by Royal Proclamation on the 8th February, 1921 ... ... The Chamber and its Standing Committee may not as yet have fulfilled all the expectations

formed of them; their decisions do not bind the Princes as a body, or individually; and their proceedings are not held in public; some of the more important Princes have hitherto refused to attend meetings of the Chamber . . . the Nizam has always adopted an attitude of entire detachment from it . . . But nevertheless the constitution of the Chamber and its Standing Committee was a great and far-reaching event. It meant that the Paramount Power had once and for all abandoned the old policy of isolating the States and that it welcomed their co-operation.

Limitations of the Chamber

47. THE NEHRU COMMITTEE ON INDIAN STATES.

. . . We are aware that the sensitiveness of some Indian Princes has in recent years been touched by what they consider to be a somewhat obtrusive interest taken in them by public opinion in British India, which they have condemned as either lacking in knowledge, or political sagacity or sympathy. We, therefore, very strongly repudiate the ill-founded charge that intelligent public opinion in British India has been too self-centred to look beyond the confines of British India or has shown any unwillingness to understand the viewpoint of the Indian Princess or their subjects or even to sympathise with it wherever and whenever it has been possible to extend sympathy. If it has at times been critical of some of the "claims" of the Indian princes, or if it has at times approached their internal problems or tried to envisage the development of the constitutional relations between them and the future self-governing India from a different angle of vision, it is no more than what it is clearly entitled to do. We are afraid that the present tendency to stress the problem of Indian States as presenting insurmountable obstacles in the way of British India achieving Dominion Status is full of incalculable mischief for both and instead of helping to bring the "two Indias" closer to each other is likely to give rise to serious misunderstanding.

Indian States and intelligent public opinion in British India

Affinities between States and British India

States cannot remain isolated from British India.

While the fact that there is an "Indian India" consisting of these States—some almost as big as, if not bigger than, some of the countries of Europe—enjoying, in a way, 'internal sovereignty', 'autonomy' and 'independence', dignities and status—may be and has to be freely admitted, we think it would be very poor statesmanship and short-sighted policy to ignore those obvious historical, religious, sociological and economic affinities which exist between the people of British India and the people of these States Nor do we think that it is possible to erect artificial geographical barriers between the two. Ideas and opinions travel from one part of India to another much more rapidly than was the case 60 or 70 years ago, and it would be absurd to deal with the problem of Indian States on the assumption that the dynamic forces now in operation in British India can for a very long period of time be expected to spend themselves on the borders of British India. It is inconceivable that the people of the States, who are fired by the same ambitions and aspirations as the people of British India, will quietly submit to existing conditions for ever, or that the people of British India, bound by the closest ties of family, race and religion to their brethren on the other side of an imaginary line, will never make common cause with them. In dealing with the problem, therefore, we would much rather base our conclusions upon the community of interests than upon differences of form This community of interests would clearly point to joint action by the parties concerned as the most natural course to adopt with a view to mutual protection and advancement. Indeed if there ever was a case for a round table conference at which a perfect understanding could easily be reached it was this. With the representatives of the princes, of their people, of the British Government and of the people of British India assembled at such a conference all difficulties could have been solved with mutual goodwill. But most of the princes have unfortunately chosen to ignore the two most important

parties—their own people and the people of British India—and have asked for or acquiesced in the appointment of the Butler Committee which, apart from the absence of necessary parties, is precluded by its very terms of reference, as we read them, from dealing with the constitutional issue. This committee is sitting in camera but such information as is available from published statements leaves no doubt in our minds that an attempt is being made to convert the Indian States into an Indian Ulster by pressing constitutional theories into service

States to be made an 'Indian Ulster'

The constitutional position at the present moment, notwithstanding some vagueness that may surround it, is by no means difficult to understand. It is claimed that according to true constitutional theory the Indian States are and have been in relation with the Crown, whether their treaties were with the East India Company or the British Crown, or whether they have been entered into since 1858 with the Government of India. Now it is obvious that the Crown under the constitution does not mean the King alone. It is a convenient constitutional phrase used to indicate the King-in-Parliament. Before 1858, the East India Company exercised sovereign rights, under powers delegated by the 'Crown', and since 1858 those powers have been exercised under delegated authority by the Government of India and the Secretary of State who is an integral part of the machinery established by Parliament for the government of India. Section 67 of the Act of 1858 provided that "all treaties made by the said Company shall be binding on Her Majesty" and similarly Section 132 of the Act now in force provides that "all treaties made by the East India Company, so far as they are in force at the commencement of this Act, are binding on His Majesty." In point of fact, the enforcement of those treaties, the fulfilment of the obligations created by those treaties and the interpretation of those treaties, have hitherto been among the normal functions and duties of the

Meaning of the term 'Crown'

Government of India and Secretary of State regulate treaty relations with States.

Government of India, subject to a so-called 'appellate' or supervisory jurisdiction of the Secretary of State for India. It is inconceivable that any Indian prince could, under the present constitution, ignore the Government of India or the Secretary of State and take up any matter relating to such obligations to the King or to His Majesty's Government. Again, the fact is that the Government of India have acquired certain powers by mere practice, usage or convention which are outside the scope of the written treaties.

Foreign Jurisdiction Act

The Foreign Jurisdiction Act XXI of 1879 has not unoften been resorted to by the Government of India for the extension of their jurisdiction.

Deposition, suspension, etc. of Princes by Government of India

By the resolution dated the 29th of October, 1920, the Government of India have given effect to the recommendations contained in paragraph 309 of the Report on Indian Constitutional Reforms which prescribed a procedure for dealing with cases in which "the question arises of depriving the ruler of an important State, temporarily or permanently, of any of the rights, dignities, powers or privileges to which he, as a ruler, is entitled or debarring from succession the heir apparent or any other member of the family of such ruler who according to the law and custom of his State is entitled to succeed."

Lord Reading's letter to the Nizam

In his letter dated the 27th March, 1926, Lord Reading emphasised the constitutional position as follows:—(*a*) The sovereignty of the British Crown is supreme in India, and therefore no ruler of an Indian State can justifiably claim to negotiate with the British Government on an equal footing. Its supremacy is not based only upon treaties and engagements, but exists independently of them, and quite apart from its prerogative in matters relating to foreign powers and policies, it is the right and duty of the British Government, while scrupulously respecting all treaties and engagements, to preserve peace and good order throughout India. (*b*) The right of the British Government to intervene in the internal affairs of the Indian States is another instance of the consequences necessarily involved in the

Claims of the Paramount Power

supremacy of the British Crown. (*c*) The varying degrees of internal sovereignty which the rulers enjoy are all subject to the exercise by the paramount power of this responsibility.

Significance of Lord Reading's letter

It is a matter of common knowledge that the exercise of these large powers, or to be more accurate, the decision of the Government of India to exercise these powers in the case of some princes in recent years[1], has been the subject of much comment and dissatisfaction, and the exposition of the constitutional position in Lord Reading's letter to His Exalted Highness the Nizam, from which we have quoted above, has led since to much searching of heart. It is not our intention or purpose to discuss the merits of the claim put forward in that letter. We simply desire to draw attention to it to show that even these large powers can only be exercised at the discretion, upon the initiative and by the machinery of the Government of India.

Rights exercised by Government of India

Dominion Government of India may claim all rights on States now exercised by Government of India.

By usage or convention, or as a necessary corollary to the paramountcy of British power, the Government of India have claimed and exercised the right of (*a*) "installing" princes on the *gaddis*, (*b*) administering the States during the minority of the ruler, (*c*) settling disputes between rulers and their *jagirdars* and (*d*) interfering in cases of gross misrule. With any legitimate desire on the part of the Indian princes to get their grievances in these respects remedied, it is possible even for democratic India to sympathise; and we feel that it is by no means impossible or impracticable to define the limits within which the Government of India, as it is constituted at present, or as it may be in future, may seek to interfere. We think however that the plain fact ought not to be overlooked that the Government of India as a Dominion will be as much the King's

[1] For instance, we may refer to the Manipur Case (1891), the Udaipur Case (1921) and the Nabha Case (1928). See Sir William Lee-Warner, *The Native States of India* (pp. 179-183) and K. M. Panikkar, *Relations of Indian States to the Government of India* (pp. 54-70).

Government, as the present Government of India is, and that there is no constitutional objection to the Dominion Government of India stepping into the shoes of the present Government of India.

Personal allegiance of Princes to the Crown

If there are personal ties of allegiance or devotion which bind the Indian princes to the throne, person or dynasty of the King, they cannot, and ought not, to suffer in strength by change or modification in the composition of the King's Government in India, when India attains Dominion Status. There will always be plenty of room for the discharge of those duties to the Crown and for the exercise on the part of the Crown of those prerogatives which may be inseparable from the personal relation that might have subsisted between the Crown and the Indian rulers.

View of Sir Leslie Scott

We shall now turn to the latest contribution on the subject. It comes from no less an authority than Sir Leslie Scott, the learned counsel engaged by the princes, who has expressed his views in a letter which has been printed in the July number of the "Law Quarterly Review". We recognise his eminence as a lawyer, but we cannot help feeling that his views as a counsel for the Indian princes have yet to be tested by an independent judicial or legal authority after having both sides of the question presented to it. So far as we are concerned we venture to differ from him entirely. After laying down that the relationship between the Crown and the Indian States cannot be governed either by international or municipal law, Sir Leslie Scott asks, "To what system of legal principles then are the relations of an Indian State to the Crown referable? There is no legal decision to serve as precedent, no complete analogy to guide. Resort must be had to first principles of law. We must think things out for ourselves It is almost a virgin field for the lawyer". Even if it is a virgin field for the lawyer, and we venture to say this is not quite correct, we think it is more a case for the constructive statesman than for the analytical lawyer. Sir Leslie Scott has in

this letter stated five definite propositions, some of which may be admitted to be correct, others of which strike us as being too broadly put. In any case the conclusion which is sought to be drawn from these propositions is of such far-reaching consequence that it may be taken as definitely certain that if the Indian princes decide to take their stand upon the position so ingeniously argued out for them, British India must substantially discount their profession of sympathy with its aspirations to Dominion Status, and treat their reference to the federation of India as no more than a vision, the realisation of which must be left to a remote and uncertain future.

Question of States demands constructive statesmanship, not legal analysis

Real attitude of Princes to political aspirations of British India

The first proposition of Sir Leslie Scott is that "the fundamental tie is consent and its recognition by Britain is unequivocal". This may be assumed to be true. It implies nothing more than what can be said of any two states bound together by treaties or mutual understandings.

Criticism of Sir Leslie Scott's view on relations between States and the Crown

The second proposition formulated by him is that "those contracts are between sovereigns—the Prince and the Crown—not the Company or the Government of British India". This proposition to our mind is untenable historically and legally, and in any case, whatever may be the true legal theory, actual practice shows that the Indian princes and States have dealt with the Government of India, and submitted to its rulings and decisions and intervention, and have never dealt with 'the Crown' or His Majesty's Government. The fact that there may be personal relationship between His Majesty and an Indian prince does not in our opinion alter or affect the real legal position or the interpretation of that legal position in actual practice.

The third proposition is "that the relationship is wholly legal—a nexus of mutual rights and obligations. It is in no sense arbitrary". We should have thought that one of the main grievances of the Indian princes was that the Government of India had in actual practice extended their jurisdiction over them by going beyond the legal relationship in an

Is the relationship between Crown and Princes legal or arbitrary?

'arbitrary' manner. If they are protesting against the 'arbitrary' extension of such jurisdiction, it is in our opinion an understandable position, but it is somewhat remarkable that the importance of this proposition in the setting in which it is stated lies not so much in its practical application in the present, as in relation to possible constitutional developments in British India.

Can the Crown assign its contracts with the Princes to a third party ?

The fourth proposition is that the princes in making these contracts gave their confidence to the British Crown and nation; and the Crown cannot assign the contracts to any third party. "The British Government as paramount power has undertaken the defence of all the States and *therefore to remain in India with whatever military and naval forces may be requisite to enable it to discharge that obligation.*" It cannot hand over these forces to any other Government—to a foreign power such as France or Japan; to a Dominion Government such as Canada or Australia; nor even to British India". (Our italics).

Sir Leslie Scott's view implies the perpetual division of India.

The necessary corollary to this is stated in the fifth proposition, viz., that "The Crown can normally choose its agents. But an agent cannot act when his interest may conflict with his duty. In all matters of common concern with the States—customs, railways, ports, the salt monopoly, etc.—there is always the possibility that the interest of British India may not be identical with the interest of a particular State. The Crown's duty is, or may be, to safeguard the interest of the State—particularly in case of a minority administration. Should the interest of the agent be given the chance of conflicting with the duty of the principal?" This if true is putting up an effective barrier against the progress of British India towards Dominion Status, now and for ever, for it is obvious that if these 'contracts' between the Indian princes and the British Crown and nation are of a personal character India must always continue to be divided between what is British India and Indian States, and the British

nation must always maintain adequate military and naval forces to discharge its obligations to Indian States. The argument we venture to say does not appear to us as anything more than ingenious. It starts on a false analogy and in applying that analogy ignores the "hard facts" of the case. There is no ground for the assumption that contracts between the princes and the Crown are on the same footing as contracts between private individuals. Sir Leslie Scott has himself pointed out in an earlier part of his letter that the princes continued to retain the attributes of sovereignty even after parting with some of its functions to the Crown It is as such sovereigns that they must be taken to have dealt with another sovereign whether we take the latter to be the East India Company or the King in Parliament.

Sir Leslie Scott ignores facts in building up theories.

Again, it is not true to say that every contract between private individuals is of such a personal character as to be incapable of being performed by any one else. There is no question of one of the contracting parties having any special confidence in the other. The so-called contracts were made under stress of circumstances and would have been of the same or similar character with any other power if it occupied the same position as the British. The argument ignores the settled practice of the Government of India and, by invoking so-called first principles in determining the "legal relationship", it overlooks the hard and unchallengable fact that from the early days of the Company it has been the Government of India and the Government of India alone which has dealt with Indian princes and Indian States. It introduces an element of "personal confidence" between them and the British nation which is not easy to understand. It suggests that the past and present Governments of India which have so far exercised the power, said to be delegated from the Crown, were and are acceptable to the Indian princes and Indian States; but that the future Government of India, if it is to be of the Dominion type, will not be so acceptable. This in plain English means that

Historical character of contracts between States and British Crown

Question of transferring Crown's rights and duties to Government of free India

the past and present Governments of India were acceptable because they were essentially foreign in their composition and not responsible to the Indian electorate and that the future responsible Government of India would not be acceptable to the Indian princes because it will consist of their own countrymen and because it will be responsible to an electorate of their own countrymen But supposing that this is so, is there any authority for the proposition that when a "contract" may be performed by an agent the choice of that agent does not rest with the principal but with the other party to the "contract ?" We have shown that so far the "contract" has been performed by white agents to the apparent satisfaction of the brown princes On what principle of law, we ask, may that "contract" not be performed by brown agents to the equal, if not greater, satisfaction of the brown princes?

Question of conflict between interests of States and those of Government of India

Let us now consider the argument that the principal cannot delegate to the agent the discharge of obligations where the agent's interest conflicts with his duty. Here again we find that the hard facts have been entirely ignored. The argument overlooks the fact that the agent of the Crown, viz., the present Government of India, has been regularly acting when its interest has conflicted with its duty, without any qualms of conscience on the part either of the principal or of the agent and without any public protest on the part of the Indian States Sir Leslie Scott then says that when "the legal relationship" has been "made clear"—that is to say, according to his own conception of that relationship —"suitable constitutional machinery for harmonious working between the two sides of India can be devised, and the States have already made it clear that they are ready and willing to follow such a plan on reasonable lines". In other words, if Sir Leslie Scott's theory of personal relationship and personal confidence, and the consequent duty of the paramount power remaining in India to discharge its obligations, is accepted, the princes would be ready and

willing to fall in with British India on reasonable lines. Once this argument is accepted as sound it is obvious that whatever be the machinery devised for harmonious working between the Indian States and British India, Dominion Status for India must be ruled out for all time to come. We have shown that this argument is wholly unsound, and we sincerely hope that legal ingenuity will not be allowed to prevail against the larger interests of the country, and that the patriotism and statesmanship of the Indian princes, aided by the growing patriotism and love of freedom among their subjects, will be concentrated more upon the establishment of practical machinery for the settlement of issues between them and a responsible Commonwealth of India than upon a determination of the theoretical question of legal relationship, which can do them no good and is fraught with mischievous possibilities which can only lead to disaster Mutual relations can only be satisfactorily determined with mutual consent and we believe that there is still plenty of room for it. But we must sound a note of warning that the natural and the legitimate aspirations of India cannot and will not be allowed to be defeated or checkmated by ingenious arguments which have no application to facts as they are.

If Sir Leslie Scott's theory is acted upon, there will be no Dominion Status for India

Political aspirations of India cannot be frustrated by Princes.

We take special note of the following passage in Sir Leslie Scott's letter:

"The political issues are of firstclass importance to the future of India as a whole. Their wise solution will affect directly the successful accomplishment by Sir John Simon and his colleagues of the task imposed by Parliament upon the Statutory Commission for British India. From an Imperial standpoint a statesmanlike treatment of the Princes now may well prove a vital factor in the future attitude of India towards the British Empire".

So that the findings of the Butler Committee arrived at in camera are to decide the fate of the people of British India without the latter being given a chance to be heard, and Sir John Simon and his

Will Butler Committee decide the future of British India under the guise of deciding the question of the States ?

colleagues, who are themselves not seized of these "political issues of first class importance", are to be guided by their "wise solution" by the Butler Committee if they are to accomplish successfully the task imposed by Parliament upon them. This was foreseen in India and openly declared from various platforms. We know now exactly what the Statutory Commission is going to accomplish. The only wise solution of these issues suggested by Sir Leslie Scott is that the British Government must "remain in India with whatever military and naval forces may be requisite to enable it to discharge its obligations". We thank Sir Leslie Scott for this authoritative forecast of the recommendations of the Statutory Commission which fully justifies the attitude taken in regard to it by all the well-known parties in India.

It is with the Government of India that the States maintain direct contact.

Leaving aside the theory of the relationship between the Crown and the Indian princes and coming to the position as it is, we maintain that we are right in saying that as a matter of fact and actual practice, it is with the Government of India that the Indian princes come into direct contact in regard to everything that concerns them or their States. It is well-known that the Political Secretary of the Government of India exercises vast powers over the Indian States. Without being a member of the Government of India, he practically discharges all the functions of a member, for there is no separate member in charge of the political portfolio, the political department being supposed to be in the direct charge of the Governor-General. The present position is that if the political department gives any decision against an Indian State or an Indian ruler, the only remedy available against it is an appeal, under certain conditions and subject to certain limitations, to the Secretary of State. We are aware that in the present circumstances this is supposed to be a valued right, but this is probably due to the very unsatisfactory procedure followed in the first instance in India. It is obvious that a right of appeal in a case which is not fairly tried is of little value and we think that it is possible

Political Department of the Government of India

to replace it by adequate constitutional provisions for the future.

In ordinary experience, the matters in regard to which the Indian States come into contact or conflict with the Government of India are those relating to customs, excise, extradition, railways, post offices, and ports or harbours In addition to this, there is the bigger common interest of self-defence. It is necessary for us to examine what are understood to be the grievances of the Indian States in regard to these matters. We simply note the fact that responsible Indian rulers and ministers of Indian States have, at times, raised their voice against what they have described to be the inequitable treatment which they received at the hands of the Government of India. How far those grievances are capable of being remedied, and how best they can be remedied are matters for investigation and joint consultation, but we venture to think that their solution is not inextricably mixed up with the continuance of the present constitution of the Government of India, or the establishment of an entirely separate and independent machinery for the exclusive treatment of these subjects. If we refrain from going into this question at greater length, it is only because the public have not hitherto been permitted to know enough of the scheme which has been in the course of incubation during the last few months. But if it is permissible to us to draw our own inferences from such statements as have been made in this connection by Sir Leslie Scott, the counsel for the Indian princes, before his departure for England, we shall sound a note of warning against the attempt that is being made to duplicate the machinery, by bringing into existence a separate Council for the Indian States to work with the Governor-General. Apart from the fact that it will be a cumbersome thing, its separate existence cannot secure the solution of matters of conflict with British India or with the future Commonwealth Government. It strikes us as being a vicious extension of the system

Subjects of common interest between States and British India

How grievances of States may be remedied

Plan of creating a separate Council for Indian States

of dyarchy with all its attendant incongruities, inconveniences, and constitutional difficulties.

Position of States in Indian Federation

A federation of some sort was foreshadowed by Sir Malcolm Hailey, . . . and there is no doubt that some such idea is also present to the mind of Sir Leslie Scott But if the constitution of India is to be a federal one, as we think it might well be, the position of the Indian States in relation to that federation appears to us to call for a definite determination and the ideas on the subject require to be cleared up Are the Indian States willing and ready to join a real federation ? We put this question as we believe that the lines on which the princes and Sir Leslie Scott are working cannot lead to any kind of federation in its well understood sense. "A federal state", says Professor Newton, "is a perpetual union of several sovereign states, based first upon a treaty between those States, or upon some historical status common to them all, and secondly, upon a federal constitution accepted by their citizens. The Central Government acts not only upon the associated States but also directly upon their citizens. Both the internal and external sovereignty of the States is impaired and the federal union in most cases alone enters into international relations". It would be, in our opinion, a most one-sided arrangement if the Indian States desire to join the Federation, so as to influence, by their votes and otherwise, the policy and legislation of the Indian Legislature, without submitting themselves to common legislation passed by it It would be a travesty of the federal idea. If the Indian States would be willing to join such a federation, after realizing the full implications of the federal idea, we shall heartily welcome their decision and do all that lies in our power to secure to them the full enjoyment of their rights and privileges. But it must be clearly borne in mind that it would necessitate, perhaps in varying degrees, a modification of the system of government and administration prevailing within their territories. We hope and trust that in the light of experience gained the Indian States

What is a Federation?

Conditions under which Princes may join Federation

may make up their mind to join formally the federation. Meanwhile we think that it is by no means impracticable to provide suitable machinery for the settlement of mutual differences on administrative and other matters The practical question of the preservation of their treaty rights and such independence as they have enjoyed or as they claim, is, in our opinion, far more important than the arid and academic discussion of the question, whether in theory their relations are with the Government of India or with the Crown.

Practical questions relating to States

Accordingly, we have provided that (*a*) all treaties made between the East India Company and the Indian States and all such subsequent treaties, so far as they are in force at the commencement of this Act, shall be binding on the Commonwealth; (*b*) the Commonwealth shall exercise the same rights in relation to, and discharge the same obligations towards, the Indian States as the Government of India exercised and discharged previous to the passing of this Act. We have made these suggestions in no spirit of vanity or idealism. We fully realise their implications and the obligations that such provisions will impose upon the future Government of India. We do believe that the Government of India of the future will discharge their obligations in their integrity and with every desire to promote harmonious relations and no desire to override cherished privileges or sentiments. Similarly, in regard to matters of a justiciable character, we have suggested that in case of any difference between the Commonwealth and any Indian State on any matter arising out of treaties, engagements, sanads or similar other documents, the Governor-General in Council may, with the consent of the State concerned, refer the said matter to the Supreme Court for its decision. We think that this will be a far better method of settling such matters than the present arrangement under which the Government of India is both a party and a judge in a controversy between itself and an Indian State. We need scarcely point out that we antici-

Suggestions of Nehru Committee regarding States

'Matters of a justiciable character' relating to States

pate that the judges of the Supreme Court will be men of the highest legal training, character and judicial independence.

Matters of a 'non-justiciable' character relating to States

In regard to non-justiciable matters involving financial and administrative relations, it should not be difficult to come to a settlement by mutual conferences and understandings. The position in the future will not, to our mind, be worse than it is. Indeed it is likely to be better, where, between different States, there are honest differences and an independent effort is made to arrive at just and equitable settlements. Practical goodwill and larger common interest are of far greater value than any meticulous considerations of ultimate sanctions. It is obvious to our mind that the question of common defence is one which is bound to be in future the rallying centre of the Government of India and the Indian States, and if it has been possible in the past to sustain common obligations and to keep alive a common sense of duty to the country at large, we do not despair of the future.

48. JOINT OPINION OF THE PRINCES' LAWYERS[1], 1928.

(1) In the analysis of the relationship between the States and the Crown legal principles must be enunciated and applied.

Partial transfer of sovereignty by the States to the British Crown

(2) The Indian States to-day possess all original sovereign powers, except in so far as may have been transferred to the Crown.

(3) Such transfer has been effected by the consent of the States concerned, and in no other way.

(4) The consent of a State to transfer sovereign

[1] July 24, 1928 Five eminent English lawyers—Sir Leslie Scott, Mr. Stuart Bevan, Mr. Wilfrid A. Greene, Mr. Valentine Holmes and Mr. Donald Somervell——were appointed by the Princes "to advise on the legal and constitutional aspects of the questions raised by the terms of reference to the Indian States Committee" (*i.e.*, the Butler Committee). This extract embodies their main conclusions. Keith says that the opinion of the Princes' lawyers 'exhibits unhappily singularly little sense of constitutional law" (*Constitutional History of India*, pp. 292-293).

rights to the Crown is individual to that State, and the actual agreement made by the State must be investigated to see what rights and obligations have been created.

(5) Such agreement appears normally in a treaty or other formal engagement. An agreement to transfer sovereign powers is, however, capable in law of being made informally. In such case, the onus is on the transferee, viz., the Crown, to prove the agreement.

Meaning of Paramountcy

(6) The relationship of the Crown as Paramount Power and the States is one involving mutual rights and obligations It rests upon agreement express or implied with each State and is the same with regard to all the States. Paramountcy gives to the Crown definite rights and imposes upon it definite duties in respect of certain matters and certain matters only, viz., those relating to foreign affairs and external and internal security. It does not confer upon the Crown any authority or discretion to do acts which are not necessary for the exercise of such rights, and the performance of such duties Wherever "paramountcy" is mentioned in this opinion we mean paramountcy in the above sense and no other.

Rights of the British Crown cannot be transferred to persons who are not under its control

(7) The relationship is between the States on the one hand and the British Crown on the other. The rights and obligations of the British Crown are of such a nature that they cannot be assigned to or performed by persons who are not under its control[1].

49. THE INDIAN STATES AND THE BRITISH CROWN[2].

The first point raised by the Indian Princes is,

[1] For criticism of this view see G. N. Singh, *Indian States and British India,* Chapter II.

[2] These extracts are taken from *Memorandum of the Indian States' People* (1928), submitted to the Butler Committee. The States' people were not allowed to represent their case before the Committee which formally took into consideration only the Princes' point of view.

that their relations are with His Majesty and not with the Government of India. This position, it appears, is based upon a statement contained in a volume of the "British Empire Survey Series" written by Dr. Keith called 'The Constitution, Administration and the Laws of the Empire' At page 250 Dr. Keith observes, "It is important to note that the relations of the Native States, however conducted, are essentially relations with the British Crown and not with the Indian Government and that this fact presents an essential complication as regards the establishment of responsible government in India. It is clear that it is not possible for the Crown to transfer its rights under a treaty without the assent of the Native States to the Government of India under responsible Government".

Direct relations between States and the Crown

Keith's view

This statement has since then been repeated by reactionary bureaucrats and by the supporters of autocracy. We are aware that this statement of Dr. Keith forms the main prop for the theory of direct relations of which we have been hearing so much recently. We, however, maintain that the position as defined by him does not seem to be borne out by Indian history. So far as this subject is concerned the history of the Indian States can be split up into three periods :—(1) from the granting of the Charter to the East India Company to the passing of the Regulating Act, 1773,(2) from 1773 to 1858 when the government of India was transferred to the Crown, and (3) the period since 1858 up to the present time. We propose to examine who conducted and controlled the relations of the Indian States during these periods.

Keith's view not supported by history

First period (1600-1773)

Let us for the moment confine our attention to the first of these three periods.........Under the authority of the Charter they (*i.e.*, the Directors of the Company) touched the Indian States and dealt with them as a sovereign power would do. In their dealings with the States the Crown of England either in its individual capacity or as the head of Parliament-

ary Government did not in the least interfere; and it was for this reason that the Company virtually made and unmade Nawabs and Princes, humbled great Rulers of Indian States, braved the Emperor of Hindustan. In fact, as remarked by Lord Macaulay, "It was considered necessary both by Lord Clive and by Warren Hastings to leave the Charter of the Company thus undefined in order that the English might treat the Princes in whose names they governed as entities or non-entities, just as might be most convenient". .... The pertinent point is, that during this first period the Indian States had absolutely no direct relations with the Crown, that treaties with them were not concluded after any consultation, sanction or ratification of the Crown; in fact, in the internal affairs of the Company the Crown did not at all interfere.

East India Company and the States

.... (During the second period) the East India Company, through its Court of Directors and the Governors-General removable by the Court of Directors, were solely responsible for establishing, shaping and controlling the relations of the Indian States. We have not heard anybody holding the Crown responsible for the policy of annexation, lapse and absorption of the Indian States into British dominions, and for the insult, humiliation and injury inflicted on Indian Princes during Lord Dalhousie's time. We, therefore, fail to see how the credit of the treaties and engagements concluded during this period can go to the Crown. The Crown as such even during the second period did not exercise any influence in the affairs of the Indian States. Although the Governor-General was a nominee of the Executive Government of England he acted on his own responsibility oftentimes disregarding the controlling powers of the double Government. But the Executive Government in England did not take any interest in the happenings in the Indian States. The Crown did not during this second period conclude any treaties or engagements directly with the Indian States;

Second Period (1773-1858)

No direct relations between States and the Crown

nor were any treaties and engagements sanctioned, confirmed or ratified by the Crown.

Third period (from 1858)

The third period is marked by the transfer of the government of the East India Company from the double control of the Court of Directors and the Board of Control to the Crown ....

There is considerable misunderstanding about the position of the Crown involved in this transfer. Many Indian Princes are under the belief that the government was transferred from the Company directly to the Crown. They believe, of course erroneously, that the Crown being represented in India in the person of the Viceroy, the Indian Princes are related to the Crown directly through the Viceroy.

Meaning of "Crown"

There is, however, no justification for thinking so. The government was not transferred to the Crown in the sense that it was delegated to the House of the Royal family of King George the Fifth but to the Crown which is a constitutional phrase for King in Parliament. "The government, therefore, through and in the name of the Crown, is to be carried on by Ministers, responsible to Parliament and to the public". The reason why the word "Crown" has been used in the phrase "Transfer to the Crown" has been given by Viscount Palmerston in the following words:

Palmerston's view

"I believe that there can be no doubt that, so far as the impression on the minds of the people of India is concerned, the name of the Sovereign of a great Empire like this must be far more respected, far more calculated to produce moral and political impressions than the name of the Company of merchants. however respectable and able they may be. We have to deal in that country with Princes, some ruling independently, some in a state of modified dependence upon us and with feudal Chiefs proud of their position, cherishing traditonary recollections of a wide empire and of great sovereigns to whom their ancestors owed allegiance. How can we expect them to feel any great respect for a mere Company of merchants? The respect they feel, the allegiance they yield, will increase ten-fold if one were given

and the other tendered to the Sovereign of a great and mighty empire". This explanation explodes the fallacy under which the Indian Princes are labouring. It was to pander to their prejudices and to tickle their vanity that the word "Crown" has been inserted in the phrase "Transfer to the Crown". It is thus clear that "Crown" here means, not any individual sovereign or his dynasty but the political head of the constitutional Government of the United Kingdom The political relations of the Indian States, therefore, are not with the House of King George V or with his person but with him as the political head of the United Kingdom.

Another important reservation which deserves to be clearly remembered in this connection is that allegiance to the sovereign and political relations with the sovereign do not mean one and the same thing. The learned authors of the *English Empire Digest* have authoritatively explained the position as follows: "Now, seeing the King has but one person and several capacities, one political capacity for the realm of England, another for the realm of Scotland, it is necessary to consider to which capacity allegiance is due, and it was resolved that it was due to the natural person of the King (which is ever accompanied with the political capacity and the political capacity as it were appropriated to the natural capacity) and it is not due to the political capacity only, that is to his Crown or Kingdom distinct from his natural capacity". So far, therefore, as allegiance, homage, loyalty, reverence and affection are concerned, they are always due to the natural person of the King. But the question of political relations relates to His Majesty's political capacity. In this capacity the Sovereign acts through his Ministers who are responsible to Parliament. In the case of the Indian States, this legal sovereignty is exercised through the Secretary of State for India, he in his turn exercising it through the Governor-General in Council. The relations of the Indian Rulers, therefore, are directly with the Government of India, indirectly with the

Distinction between King's "natural person" and "political capacity"

Relations of the States are directly with the Government of India.

Secretary of State and only remotely with the Crown. The present cry of direct relations with the Crown seems to be mischievously raised with a view to snap asunder the political relations of the States with the Government of India. Further, it is well-known that the King can do no wrong, which means that for every act done by or in the name of the King a Minister is responsible. Similarly, whatever is done in the name of the Crown towards the Indian States must be supposed to be done by the Secretary of State for India, acting, if necessary, with advice of the Cabinet in England, which is entirely responsible to Parliament. When once this position is clearly understood, the distinction between a Viceroy and the Governor-General becomes obvious. As already pointed out, allegiance is due to the body or the person of His Majesty. On ceremonial or on State occasions this is shown to His Majesty's representative, the Viceroy. But as the human body of His Majesty is entirely distinct from his political body or his personal capacity from his political capacity as head of the administration, the Viceroy as representing His Majesty on ceremonial occasions is entirely distinct from the Governor-General who is a representative of the political capacity of the Crown. The Viceroy, therefore, has nothing to do with the political relations of the Indian States. Even the term 'Viceroy' is not recognised in the Constitution and is not used in the warrants of appointments now. This view is supported by Sir W. Hunter and Sir O'Moore Creagh.

Distinction between Viceroy and Governor-General

Section 20 of Act of 1858

Another index that the Indian States are subordinate to the Government of India is supplied by Section 20 (of the Government of India Act, 1858), which provides that the revenues of India (not only of British India) shall be received for and in the name of His Majesty and shall, subject to the provisions of this Act, be applied for the purposes of the government of India alone. Section 20 (3) (1) includes all tributes and other payments received from the

Indian States. They are included in the revenues of the Government of India. This makes the position entirely distinct and leaves no shadow of doubt that the relations of the Indian States are with the Government of India. If they had been with the British Crown directly, then the tributes, *Nazaranas*, etc. ought to have been received by the British Exchequer. Moreover, we find that the powers of the Central Legislature are limited as regards certain subjects. But the introduction of any measure affecting the relations of the Government with foreign Princes or States is permissible, if sanctioned by the Governor-General. Such a measure does not require the previous sanction, either of the Imperial Parliament or of the Secretary of State for India as some measures do, such as those mentioned in Section 65, sub-clause 2 and 3. If the Governor-General permits, such measures can be introduced and passed by the Central Legislature. This provision strengthens the inference that the Governor-General and the Government of India have the controlling power over the Indian States. It is further to be remembered that the Political Department, which exercises control over the Indian States, is employed by the Government of India and the expenditure for the same is incurred out of the British Indian Treasury and not out of the British Exchequer. The Government of India Act, therefore, makes it abundantly clear that the control of the Indian States rests with the Government of India, that the treaties are made binding on the Government of India, that the duty of maintaining peace and order is imposed on that Government, that the tributes are appropriated by the British Indian Government and that the Political Department is maintained at the cost of this Government and is controlled by and is subordinate to this Government of India. Section 67 of the Act of 1858 or Section 132 of the present Act (*i.e.*, Act of 1919) specifically lays down that all treaties made by the East India Company are binding on His Majesty. If really the treaties were concluded with the Crown as is alleged by the Indian Princes this clause was

Power of Governor-General to permit legislation regarding States

Political Department

Treaties

unnecessary and would never have been inserted. Treaties concluded with the Indian States prior to 1858 were with the East India Company and not with the Crown and treaties concluded with the Government of India were not with the Crown in its individual capacity, but were for the Crown, which is a constitutional phrase meaning King in Parliament, and concluded by the Governor-General under the statutory power given to him by Section 33 of the Act.

Powers of Governor-General

....The control of defence of both British India and Indian States vests in the Governor-General and with the assistance of British Indian Army, he alone has the power to keep peace and order in the Indian States. The Governor-General is also the head of the Political Department which superintends, directs and controls all affairs of the Indian States. All treaties have also been made by or in the name of the Governor-General. Recognition of succession, minority administrations, settlement of inter-states disputes and corrective measures about removing misrule—all are undertaken by the Governor-General as the head of the Political Department. The Governor-General might or might not have consulted the Secretary of State for India or the constitutional advisers of the Crown, but that does not derogate from the position of the Government of India as the principal controlling power over the Indian States. And we find that in the case of all the States, whether treaty States or non-treaty States or even petty estates, it is the Government of India who have taken the initiative and also the final steps in all these matters. The abdication of Nabha, whether voluntary or otherwise, the voluntary abdication of Indore, the rebuff administered to the Nizam for his mal-administration, prove beyond a shadow of doubt, that the Indian States are subordinate to the Government of India who has taken the initiative and final responsibility in all these cases.

tions, subjects, or servants, with respect to whom His Highness is absolute".

Yet so soon as 1804 the Indian Government successfully pressed the appointment of an individual as Chief Minister. In 1815 the same Government had to interfere because the Nizam's sons offered violent resistance to his orders....The Indian Government was compelled again to intervene and in 1820 British officers were appointed to supervise the district administration . . . . Later on again the Court of Directors instructed the Indian Government to intimate to the Nizam through the Residency that they could not remain "indifferent spectators of the disorder and misrule" . . . . . . These are only some of the occasions of intervention. They are sufficient to show that from the earliest times there was intervention by the Paramount Power, in its own interests as responsible for the whole of India, in the interests of the States, and in the interests of the people of the States.

Reaction against policy of intervention

From this policy of intervention there was in time a reaction. For some years before India passed under the direct government of the Crown, the doctrine of 'laissez faire' prevailed. The States were left alone and in the event of revolt, misrule, failure of heirs, etc., the Paramount Power stepped in with annexation. This policy was abandoned again after the Crown assumed the direct government of India. That great historical event, with its numerous implications, was thus described by Lord Canning........

Views of Lord Canning

"The Crown of England", he said, "stands forth the unquestioned ruler and Paramount Power in all India, and is for the first time brought face to face with its feudatories. There is a reality in the suzerainty of the Sovereign of England which has never existed before and which is not only felt but eagerly acknowledged by the Chiefs".

Later in his despatch, dated the 30th April, 1860, Lord Canning laid down the two great principles which the British Government has followed ever

since in dealing with the States : (1) That the integrity of the States should be preserved by perpetuating the rule of the Princes whose power to adopt heirs was recognised by sanads granted in 1862; (2) That flagrant misgovernment must be prevented or arrested by timely exercise of intervention.

With this acceptance of the necessity of intervention modern political practice may be said to have begun. It received an extension from the development of a strong Political Department. Intervention reached its zenith during the viceroyalty of Lord Curzon...... Revival of policy of intervention

The Paramount Power has defined its authority and right to interfere with no uncertain voice on several occasions, in the Baroda case (1873-75), the Manipur case (1891-92), and so lately as March 1926 in the letter of ...... Lord Reading to .... the Nizam ..... which carried the authority of His Majesty's Government. .... Instances of interference by the Paramount Power

* * * *

In the last ten years the Paramount Power has interfered actively in the administration of individual States in only eighteen cases. In nine of these interference was due to maladministration; in four to gross extravagance, or grave financial embarrassment. The remaining five cases were due to miscellaneous causes. In only three cases has the Ruler been deprived of his powers.

* * * *

We will now consider the relationship between the Paramount Power and the States in greater detail. In this we have the advantage of the opinion of eminent counsel on the legal and constitutional aspects of the questions raised by the terms of reference to us, an opinion placed before us by Sir Leslie Scott. With much of that opinion we find ourselves in agreement. We agree that the relationship of the States to the Paramount Power is a relationship to the Crown, that the treaties made with them are treaties made with the Crown, and that those treaties Opinion of the Princes' lawyers

are of continuing and binding force as between the States which made them and the Crown. We agree that it is not correct to say that "the treaties with the Native States must be read as a whole", a doctrine to which there are obvious objections in theory and in fact. There are only forty States[1] with treaties but the term in this context covers engagements and *sanads*[2]. The treaties were made with individual States, and although in certain matters of imperial concern some sort of uniform procedure is necessary, cases affecting individual States should be considered with reference to those States individually, their history and local circumstances and traditions, and the general necessities of the case as bearing upon them.

The term 'treaty' includes engagements and *Sanads.*

On the other hand we cannot agree with certain statements and arguments that occur in this opinion The relationship of the Paramount Power with the States is not a merely contractual relationship, resting on treaties made more than a century ago. It is a living, growing, relationship shaped by circumstances and policy, resting, as Professor Westlake has said, on a mixture of history, theory and modern fact. The novel theory of a paramountcy agreement limited as in the legal opinion, is unsupported by evidence, is thoroughly undermined by the long list of grievances placed before us which admit a paramountcy extending beyond the sphere of any such agreement, and in any case can only

Criticism of the opinion of the Princes' lawyers

[1] Rampur (1794), Mysore (1799, 1881, 1913), Hyderabad (1800, 1853), Alwar (1803), Gwalior (1804, 1844), Baroda (1805), Bharatpur (1805), Travancore (1805), Dholpur (1806), Cochin (1809), Kolhapur (1812), Rewa (1812), Orchha (1812), Sikim (1814), Kotah (1817), Karauli (1817), Tonk (1817), Samthar (1817), Bhopal (1818), Bikaner (1818), Datia (1818), Dewas Senior and Junior (1818), Indore (1818), Jaipur (1818), Jaisalmer (1818), Jodhpur (1818), Kishengarh (1818), Partabgarh (1818), Udaipur (1818), Bundi (1818), Cutch (1819), Sawantwadi (1819), Dhar (1819), Sirohi (1823), Bahawalpur (1838), Khairpur (1838), Jhalawar (1838), Kashmir (1846), Kalat (1876).

[2] See LeeWarner, *The Native States of India,* pp. 53-57.

engagements and *sanads;* and they have thus consolidated the position of the Crown as Paramount Power.

Government of India on 'Paramountcy' (1877)

These important effects of the operation of usage and sufferance were pointed out by the Government of India in 1877. "The paramount supremacy of the British Government", it was then said, "is a thing of gradual growth; it has been established partly by conquest; partly by treaty; partly by usage; and for a proper understanding of the relations of the British Government to the Native States, regard must be had to the incidents of this *de facto* supremacy, as well as to treaties and charters in which reciprocal rights and obligations have been recorded, and the circumstances under which those documents were originally framed. In the life of States, as well as of individuals, documentary claims may be set aside by overt acts; and a uniform and long-continued course of practice acquiesced in by the party against whom it tells, whether that party be the British Government or the Native State, must be held to exhibit the relations which in fact subsist between them".

Alleged limitations on 'Paramountcy'

It is not in accordance with historical fact that paramountcy gives the Crown definite rights and imposes upon it definite duties in respect of certain matters only, viz., those relating to foreign affairs and external and internal security, unless those terms are made to cover all those acts which the Crown through its agents has considered necessary for imperial purposes, for the good government of India as a whole, the good government of individual states, the suppression of barbarous practices, the saving of human life, and for dealing with cases in which rulers have proved unfit for their position. It is not in accordance with historical fact to say that the term "subordinate co-operation" used in many of the treaties is concerned solely with military matters. The term has been used consistently for more than a century in regard to political relations.

Meaning of "subordinate co-operation"

In these and other respects the opinion of counsel appears to us to ignore a long chapter of historical experience[1].

States are *sui generis*.

What then is the correct view of the relationship between the States and the Paramount Power? It is generally agreed that the States are *sui generis*, that there is no parallel to their position in history, that they are governed by a body of convention and usage not quite like anything in the world. They fall outside both international and ordinary municipal law, but they are governed by rules which form a very special part of the constitutional law of the Empire. Some sixty years ago Sir Henry Maine regarded their status as quasi-international. Professor Westlake regarded the rules which regulate their status as part of the constitutional law of the Empire. A similar view was expressed by Sir Frederick Pollock, who held that in cases of doubtful interpretation the analogy of international law might be found useful and persuasive.

Views of Maine, Westlake and Pollock

In a well-known passage in his minute in the Kathiawar case (1864) Sir Henry Maine refers to the relationship of divided sovereignty between the Paramount Power and the States. "Sovereignty", he wrote, "is a term which, in international law,

[1] The Princes' lawyers observed, "The Crown has, by the mere cession to it of paramountcy, acquired no right to control the independent action of any State outside the special field so ceded. Outside the subjects of foreign relations and the external and internal security of the State, each State remains free to guide its actions by considerations of self-interest, and to make what bargain with the Government of India it may choose. There is no legal or constitutional power in the Government of India, or its officers, nor in the Viceroy or the Political Department, to insist on any agreement being entered into by a State. Nor is there any legal basis for a claim that any State is under a duty to co-operate in matters outside the field of paramountcy with British India. The phrase 'subordinate co-operation' which appears in some treaties (*e.g.*, the Udaipur treaty of 1818) is concerned, in our opinion, solely with military matters".

Maine's view on division of sovereignty between States and Paramount Power

indicates a well ascertained assemblage of separate powers or privileges. The rights which form part of the aggregate are specifically named by the publicists who distinguish them as the right to make war and peace, the right to administer civil and criminal justice, the right to legislate and so forth. A sovereign who possesses the whole of this aggregate of rights is called an independent sovereign; but there is not, nor has there ever been, anything in international law to prevent some of those rights being lodged with one possessor, and some with another Sovereignty has always been regarded as divisible. It may perhaps be worth observing that, according to the more precise language of modern publicists, 'Sovereignty' is divisible, but independence is not. Although the expression 'partial independence' may be popularly used, it is technically incorrect Accordingly there may be found in India every shade and variety of sovereignty, but there is only one independent sovereign—the British Government".

Present character of 'Paramountcy'

We are concerned with the relationship between the Paramount Power and the States as it exists to-day, the product of change and growth. It depends, as we have already said, upon treaties, engagements and sanads supplemented by usage and sufferance and by decisions of the Government of India and the Secretary of State embodied in political practice. As a general proposition, and by way of illustration rather than of definition, the activities of the Paramount Power may be considered under three main heads: (1) external affairs; (2) defence and protection; (3) intervention.

Paramount Power and external affairs

The Indian States have no international life. They cannot make peace or war or negotiate or communicate with foreign States. This right of the Paramount Power to represent the States in international affairs, which has been recognised by the Legislature, depends partly on treaties, but to a greater extent on usage. That this right of the Paramount Power to represent the States in inter-

national affairs carries with it the duty of protecting the subjects of those States while residing or travelling abroad, is also recognised by the Legislature. For international purposes State territory is in the same position as British territory, and State subjects are in the same position as British subjects. The rights and duties thus assumed by the Paramount Power carry with them other consequential rights and duties. Foreign States will hold the Paramount Power responsible if an international obligation is broken by an Indian State Therefore the Princes co-operate with Paramount Power to give effect to the international obligations entered into by the Paramount Power; they co-operate with the Paramount Power to fulfil its obligations of neutrality; they help to enforce the duties of the Paramount Power in relation to the suppression of the slave trade. Since a foreign power will hold the Paramount Power responsible for injuries to its subjects committed in an Indian State, the Paramount Power is under obligation to see that those subjects are fairly treated. Of these duties Professor Westlake very truly says that they are owed by the States to Great Britain "as the managing representative of the Empire as a whole," and that they consist in helping Great Britain to perform international duties which are owed by her in that character. On the other hand, the Paramount Power, when making treaties, will, in view of special circumstances existing in the Indian States, insert reservations in order to meet these special circumstances. In all such cases there is, in practice, no difference between the States and the Paramount Power, but the States ask that they may be consulted, where possible, in advance before they are committed to action. This request is, in our opinion, eminently reasonable and should be accepted.

States co-operate with the Paramount Power in fulfilling international obligations.

The Paramount Power should consult States before undertaking international obligations.

Until quite recently the Paramount Power acted for the States not only in their relations with foreign countries, but also in all their relations with one another. During the present century circumstances

Paramount Power and inter-State relations

have combined to lead to greater intercommunication between the States. But they cannot cede, sell, exchange or part with their territories to other States without the approval of the Paramount Power, nor without that approval can they settle inter-statal disputes. "As we do not allow the States to go to war with one another we claim the right as a consequence, and undertake the duty, of preventing those quarrels and grievances which among really independent powers would lead to international conflict." This principle, stated by Sir Henry Maine in 1863, still holds good.

Maine's view

Paramount Power and problem of defence

The Paramount Power is responsible for the defence of both British India and the Indian States and, as such, has the final voice in all matters connected with defence, including establishments, war material, communications, etc. It must defend both these separate parts of India against foes, foreign and domestic. It owes this duty to all the Indian States alike. Some of the States contribute in different ways to the cost of this defence by the payment of tribute, by the assignment of lands, by the maintenance of Indian States Forces. All the States rallied to the defence of the Empire during the Great War, and put all their resources at the disposal of the Government. But, whether or not a State makes a contribution to the cost of defence, the Paramount Power is under a duty to protect the States. It follows from this duty of protection, first, that the British Government is bound to do everything really necessary for the common defence and the defence of the States; secondly, that the States should co-operate by permitting everything to be done that the British Government determines to be necessary for the efficient discharge of that duty; thirdly, that they should co-operate by abstaining from every course of action that may be declared dangerous to the common safety or the safety of other States. These obligations are generally accepted and the States work together with the British Government to their utmost ability. It follows that the Para-

States should co-operate with Paramount Power in dealing with defence matters.

mount Power should have means of securing what is necessary for strategical purposes in regard to roads, railways, aviation, posts, telegraphs, telephones, and wireless cantonments, forts, passage of troops and the supply of arms and ammunition.

Duty of Paramount Power in relation to internal rebellions in States

The duty of the Paramount Power to protect the States against rebellion or insurrection is derived from the clauses of treaties and *sanads,* from usage, and from the promise of the King-Emperor to maintain unimpaired the privileges, rights and dignities of the Princes. This duty imposes on the Paramount Power correlative obligations in cases where its intervention is asked for or has become necessary. The guarantee to protect a Prince against insurrection carries with it an obligation to enquire into the causes of the insurrection and to demand that the Prince shall remedy legitimate grievances, and an obligation to prescribe the measures necessary to this result.

'Privileges, rights and dignities' of Princes to be maintained unimpaired by Paramount Power

The promise of the King-Emperor to maintain unimpaired the privileges, rights and dignities of the Princes carries with it a duty to protect the Prince against attempts to eliminate him, and to substitute another form of government. If these attempts were due to misgovernment on the part of the Prince, protection would only be given on the conditions set out in the preceding paragraph. If they were due, not to misgovernment, but to a widespread popular demand for change, the Paramount Power would be bound to maintain the rights, privileges and dignity of the Prince; but it would also be bound to suggest such measures as would satisfy this demand without eliminating the Prince. No such case has yet arisen, or is likely to arise if the Prince's rule is just and efficient, and in particular if the advice given by His Excellency Lord Irwin to the Princes, and accepted in principle by their Chamber, is adopted in regard to a fixed privy purse, security of tenure in the public services and an independent Judiciary.

Paramount Power should respond to popular demand for change.

The history of intervention has already been described. Intervention may take place for the benefit of the Prince, of the State, of India as a whole.

Paramount Power's control over succession in States

Lord Canning's adoption *sanads* of 1862 recited the desire of the Crown that "the Governments of the several Princes and Chiefs in India who now govern their territories should be perpetuated, and that the representation and dignity of their houses should be continued" In order to secure the fulfilment of this desire the Paramount Power has assumed various obligations in respect to matters connected with succession to the houses of the Ruling Princes and Chiefs. In the first place, it was laid down in 1891 that "it is the right and the duty of the British Government to settle successions in subordinate Native States. Every succession must be recognised by the British Government, and no succession is valid until recognition has been given." In 1917, however, this view of the position was modified and in a "Memorandum on the ceremonies connected with successions" issued by the Government of India, it was laid down that where there is a natural heir in the direct line he succeeds as a matter of course and it was arranged that in such cases the recognition of his succession by the King-Emperor should be conveyed by an exchange of formal communications between the Prince and the Viceroy. In the case of a disputed succession, the Paramount Power must decide between the claimants having regard to their relationship, to their personal fitness and to local usage. In the second place, Lord Canning's *sanads* guaranteed to Princes and Chiefs the right, on failure of natural heirs, to adopt a successor in accordance with Hindu or Muhammadan Law. But such adoption in all cases requires the consent of the Paramount Power. In the third place, the Paramount Power has, in the case of a minority of a Ruling Prince, very large obligations to provide for the administration of the State, and for the education for the minor. These obligations, obvious and admitted, of the Paramount Power to provide for minori-

View of British Government in 1891

View of British Government in 1917

Paramount Power's duty in case of minority of Princes

ties afford, perhaps, as strong an illustration as any other of the way in which usage springs up naturally to supply what is wanting in the terms of treaties that have grown old. Usage, in fact, lights up the dark places of the treaties.

Usages and treaties

The conduct of the Prince may force the Paramount Power to intervene both for the benefit of the State and for the benefit of the successors to the Prince. It is bound to intervene in the case of gross misrule; and its intervention may take the form of the deposition of the Prince, the curtailment of his authority or the appointment of an officer to exercise political superintendence or supervision. In all these cases a commission must, under a recent Resolution of the Government of India, be offered, to enquire and report before any action is taken. The Paramount Power will also intervene if the ruler, though not guilty of misrule, has been guilty of disloyalty or has committed or been a party to a serious crime. Similarly it will intervene to suppress barbarous practices, such as sati or infanticide, or to suppress torture and barbarous punishment.

Paramount Power may intervene in case of 'gross misrule', disloyalty, crime and 'barbarous practices'.

The small size of the State may make it difficult for it to perform properly the functions of government. In these cases the Paramount Power must intervene to carry out those functions which the State cannot carry out. The general principle was stated by Sir Henry Maine in 1864, in reference to Kathiawar. He said, "Even if I were compelled to admit that the Kathiawar States are entitled to a larger measure of sovereignty, I should still be prepared to maintain that the Government of India would be justified in interfering to the extent contemplated by the Governor-General. There does not seem to me to be the smallest doubt that if a group of little independent States in the middle of Europe were hastening to utter anarchy, as these Kathiawar States are hastening, the Greater Powers would never hesitate to interfere for their settlement and pacification in spite of their theoretical independence".

Special duty of Paramount Power in case of small States

Maine's view

Financial and economic matters

Most of the rights exercised by the Paramount Power for the benefit of India as a whole refer to those financial and economic matters which fall under the second part of our terms of reference . . . it is only necessary to note a fact to which due weight has not always been given. It is in respect of these financial and economic matters that the dividing line between State sovereignty and the authority of the Paramount Power runs; and, apart from interferences justifiable on international grounds or necessary for national defence, it is only on the ground that its interference with State sovereignty is for the economic good of India as a whole that the Paramount Power is justified in interposing its authority. It is not justified in interposing its authority to secure economic results which are beneficial only or mainly to British India, in a case in which the economic interests of British India and the States conflict.

Paramount Power may intervene 'for the economic good of India as a whole'.

Some of the treaties contain clauses providing that British jurisdiction shall not be introduced into the States; and it is the fact that the States are outside the jurisdiction of the British courts, and that British law does not apply to their inhabitants, which is the most distinct and general difference between the States and British India. Nevertheless the Paramount Power has found it necessary, in the interests of India as a whole, to introduce the jurisdiction of its officers in particular cases, such as the case of its troops stationed in cantonments and other special areas in the Indian States, European British subjects, and servants of the Crown in certain circumstances.

Introduction of British jurisdiction in States

These are some of the incidents and illustrations of paramountcy. We have endeavoured, as others before us have endeavoured, to find some formula which will cover the exercise of paramountcy, and we have failed, as others before us have failed, to do so. The reason for such failure is not far to seek. Conditions alter rapidly in a changing world. Imperial necessity and new conditions may at any

time raise unexpected situations. Paramountcy must remain paramount; it must fulfil its obligations defining or adapting itself according to the shifting necessities of the time and the progressive development of the States. Nor need the States take alarm at this conclusion. Through paramountcy and paramountcy alone have grown up and flourished those benign relations between the Crown and the Princes on which at all times the States rely. On paramountcy and paramountcy alone can the States rely for their preservation through the generations that are to come. Through paramountcy is pushed aside the danger of destruction or annexation.

Paramountcy must adapt itself to changing circumstances.

51. THE PRINCES AT ROUND TABLE CONFERENCE.

I. Speech of Maharaja of Bikaner, November 17, 1930.

. . . . The ultimate attainment of Dominion Status under the Crown is inherent in the declaration of policy in 1917, and has more recently received authoritative endorsement. Let us hitch our wagon to that star, fully realising . . . that in the intervening stage certain safeguards and guarantees are imperatively necessary for the security of the body politic and all parts thereof, but looking straight on. Nothing worth having can be attained without facing some risks. These were taken when Lord Durham laid the foundations for the proud position which Canada enjoys to-day as the premier Dominion in our great Commonwealth, to the mutual benefit of Great Britain and Canada. Similar risks were run when Sir Henry Campbell-Bannerman secured Dominion Status for South Africa with the happiest results . . . . . I am equally convinced that if this Conference will but do the right thing by India, justly and magnanimously, my country will be a willing and contented partner in the Commonwealth. . . . . . No half-hearted measures, and no tinkering with the constitution will . . . . meet the situation. Many of our troubles in the past, and our troubles

"Ultimate attainment of Dominion Status" supported

Analogy of Canada and South Africa

of the present, have arisen from these causes. Moreover when, in response to irresistible demands, some constitutional advance was made, it was often too late; and it wore the appearance of having been conceded with a bad grace and wrested from the British Government. So there never was a time in the history of India and of the Empire when courage —courage in thought, in aim, in constructive statesmanship—was more needed than now, when the great ambitions stirring India are struggling for constitutional expression . . . .

Courageous statesmanship required

From what standpoint then we of the States approach this great task ? . . . We are here specially to present the policies of the Indian States. First and foremost in those policies is an unflinching and unqualified loyalty to the Throne and Person of His Majesty the King-Emperor of India . . .

Loyalty to the Crown

Linked with this devotion to the Crown is an unfaltering adhesion to the British Commonwealth of Nations . . . . Our attachment to the Empire or Commonwealth, call it what we may, is no mere matter of sentiment. It is based on the profound conviction that not only can each constituent State reach its full expression within these bonds and under the Crown, but a higher development, politically and economically, than it could attain as an isolated independent unit.

Adhesion to the Empire

Thirdly, we stand without compromise on our treaty rights and all that they involve. Those Treaties are with the British Crown, and obviously cannot be transferred to any other authority without our free agreement and assent. But do not conclude from this that I am one of those people who think that things never change. The States rightly maintain that Treaties concluded in honour and friendship are binding until they may be amended, and they can only be amended by negotiation and honourable agreement on both sides. Nor must it be concluded that we of the Indian States are under the belief that changes in British India will have no reflex action on ourselves and on our relations with our own sub-

Treaty Rights

is the dominant force amongst all thinking Indians to-day.

Diversity in India

......if we are to build well and truly, we must recognise that associated with this geographical unity India is a land of some diversity. Our starting point, therefore, must be a recognition of this diversity; our unity must be sought not in the dead hand of an impossible uniformity but in an associated diversity. For these reasons, the establishment of a unitary State, with a sovereign parliament sitting at Delhi, to which the whole people would look in small things as in large, is to my mind impossible. There would be no room in such a constitution for the Indian States; moreover, such a Government would crack under its own imponderability........

Unitary Government not possible

Federal Government recommended

We of the Indian States are willing to take our part in, and make our contribution to, the greater prosperity and contentment of India as a whole. I am convinced that we can best make that contribution through a federal system of Government composed of the States and British India.........

Princes want 'safeguards'.

As to the question whether, if a Federal Government is devised for India, the Princes and States will enter into association with it, the final answer must obviously depend on the structure of the Government indicated and on other points involved, such, for instance, as certain necessary safeguards—constitutional and fiscal—for the preservation of the rights and interests of the States and their subjects. ...... But, speaking broadly, the Princes and States realise that an All-India Federation is likely to prove the only satisfactory solution of India's problem..... The Indian Princes will only come into the Federation of their own free will, and on terms which will secure the just rights of their States and subjects.

Adhesion to Federation must be voluntary.

* * * * *

Treaty Rights infringed

.......It is an open matter of complaint that our Treaty Rights have been infringed......it has been publicly admitted by no less an authority than the Viceroy and Governor-General of India that the Treaty Rights of the States have been encroached

upon, and that in some cases an arbitrary body of usage and political practice has come into being The time has passed when issues of this importance can be decided 'ex parte' by any Government. We, therefore, attach the utmost importance to the establishment of a Supreme Court, with full powers to entertain and adjudicate upon all disputes of a justiciable nature as to our rights and obligations guaranteed under our Treaties......Next, we claim that in the questions which arise concerning the purely internal affairs of the States their case should not go by default......The King's Vicegerent in India is even now burdened with many and grievous responsibilities, which will be weighted under the new system of Government.......We think that it will be impossible for any man, however able, amid these grave pre-occupations, to give adequate personal attention to those questions affecting the States which come up for day to day decision, and for which he will be directly responsible to the Crown. For these reasons some of us press for the appointment of an Indian States Council, to work with the Political Secretary and to advise the Viceroy of the day. Thirdly, there will be the need for the classification of those administrative questions which are of common concern to British India and the Indian States. This classification will require the consent of the States.......

Need for a Supreme Court

Viceroy to be advised by a States Council

Administrative questions affecting States and British India

II. Speech of Mr. Ramsay MacDonald, November 21, 1930.

... .The declaration of the Princes has revolutionised the situation......The Princes saying what they have said has at once not only opened our vision, not only cheered our hearts, not only let us lift up our eyes and see a glowing horizon, but has simplified our duties. The Princes have given a most substantial contribution in opening up the way to a really united federated India.

Value of the part played by Princes in the Conference

III. Speech of Mr. Ramsay MacDonald, January 19, 1931.

'Federation of all-India'

His Majesty's Government has taken note of the fact that the deliberations of the Conference have proceeded on the basis, accepted by all parties, that the Central Government should be a federation of all-India, embracing both the Indian States and British India in a bi-cameral Legislature . . . The connection of the States with the Federation will remain subject to the basic principle that in regard to all matters not ceded by them to the Federation their relations will be with the Crown acting through the agency of the Viceroy.

Responsible Executive

With a Legislature constituted on a federal basis, His Majesty's Government will be prepared to recognise the principle of the responsibility of the Executive to the Legislature.

IV. Speech of Sir Manubhai Mehta[1], December 23, 1932.

Federation suggested by Gaikwar of Baroda in 1918

.....It is often pictured that the idea of federation has sprung up in the minds of the Princes only like a mushroom—that it is only of yesterday's growth, but let me remind you.......that it was in 1918 that the great statesmanlike Ruler who now graces the *gadi* of Baroda......in response to Lord Chelmsford's request as to what were the lines on which future Reforms should go forward, said that the future of India and the good of the Indian States lay in federation.......Since 1918 the Princes have consistently worked on this theory. In the Montagu-Chelmsford Report the scheme of federation was pictured but for ten years no steps were taken to give effect to this idea of federation by which the Princes were to be given some share in the management of questions of joint concern, such as customs, railways, salt and so on, which are now considered to be federal......the Princes have been consistently tak-

Princes consistently supported idea of Federation.

Representative of Bikaner.

ing a sustained interest in the idea of the development of federation since 1918. When, therefore, in 1930 you were pleased to call the Princes and the British Indians together in a Round Table Conference, and when a generous suggestion came from the British Indians that the Princes should unite in a common federation, His Highness the Maharaja of Bikaner, on behalf of the Princes, gladly accepted the idea, and welcomed the offer of federation as being in the best interests of his mother country . . . the Princes made it clear......that they would gladly enter federation, with two provisos. First, they wanted to know whether they stood on *terra firma* or whether they were standing on what the Maharaja of Bikaner called the shifting sands of expediency He wanted to know what the rights of the Princes were. The Princes were naturally anxious to know where they stood on the eve of the transfer of control from Whitehall to Delhi, and therefore, he wanted to clear up the question of Paramountcy. He asked how far Paramountcy extended, because after the declaration of the Butler Committee that Paramountcy must ever remain Paramount, the doctrine of the ultimate powers of the Government became rather over-bearing. It was said that the powers of the Government meant the ultimate or residuary powers, anything undefined, and naturally the Princes became a little alarmed. They wanted some definition to be given of that doctrine of Paramountcy, and I am glad to inform my British Indian colleagues that this will not stand in the way of the early realisation of Federation, because the Secretary of State and the present Viceroy have been doing their level best to satisfy the Princes in their demand for a satisfactory solution of the Paramountcy question. When the question of Paramountcy is settled, the Princes will naturally carry out their promise of entering into Federation.

Attitude of Princes at R. T. C.

Question of Paramountcy

The second proviso made by the Princes was with regard to their safeguards. They wanted a clear picture; they wanted the picture to be completed

'Safeguards' for Princes

before they were asked to come into Federation. We are now about to complete the picture.

* * * * *

Princes want responsible Federal Government.

.... whatever you give must lead to a real responsibility at the Centre. The Princes have also made it very clear .... that they are prepared to enter into Federation only with a self-governing India, with a responsible India...They said they were not prepared to come into Federation with an irresponsible Centre.

52. MAHATMA GANDHI ON PRINCES[1], 1931.

The Princes are British Officers in Indian dress. A Prince is in the same position as a British Officer: He has to obey ... We argue that the Princes ought to be transferred to the control of the Indian Government.

Princes are British officers.

[1] Talk with Mr. H. N. Brailsford in London, October, 1931. See Gandhi, *The Indian States' Problem*

APPENDIX B

CONSTITUTION OF THE INDIAN NATIONAL CONGRESS[1].

Article I. The object of the Indian National Congress is the attainment of Swarajya[2] by the people of India by all legitimate and peaceful means. Object

(a) The Indian National Congress shall ordinarily meet once every year . . . Annual Meeting

*   *   *   *

Article II. Every delegate elected to the Indian National Congress shall be deemed to have expressed his or her acceptance of the object of the Congress and methods of its attainment as laid down in the foregoing Article, and shall be bound by the Constitution and the Rules of the Congress.

Article III. The Indian National Congress Organisation shall consist of the following :—(a) The Indian National Congress. (b) The All-India Congress Committee. (c) Provincial Congress Committees. (d) District Congress Committees. (e) Sub-Divisional, Taluqa or Tahsil, Firka or other local Congress Committees. (f) Such other Committees outside India as may from time to time be recognised by the Congress in this behalf. Constituent Committees

*   *   *   *

Article IV. No person shall be eligible to be a member of any of the organisations referred to in the foregoing Article, unless he or she has attained the age of 18 and expressed in writing his or her acceptance of the object and the methods as laid down in Article I of this Constitution and of the Rules of the Congress. Membership

[1] Adopted at Nagpur session (1921) and amended at Cocanada session (1923). It was further amended by the Bombay session (June, 1939) of the All-India Committee.

[2] The words "Purna Swaraj (Complete Independence)" were substituted in the amendment of 1939.

Provincial Congress Committee

Article VI. (a) There shall be a Provincial Congress Committee in and for each of the Provinces[1] . . .

(b) Each Provincial Congress Committee shall organise District and other Committees referred to in Article III . . .

Membership

(c) Each Provincial Congress Committee shall consist of representatives elected annually by the members of the Congress organisations in the province . .

Article VII. Every person not disqualified under Article IV and paying a subscription of four annas per year shall be entitled to become a member of any primary organisation controlled by the Provincial Congress Committee .

Article VIII. Each Provincial Congress Committee shall be responsible for the election of delegates to the Congress.

No one shall be qualified for election who is not a member of any Congress organisation.

The number of delegates shall be not more than one for every 50,000 or its fraction of the inhabitants of the Province of its jurisdiction, including the Indian States therein, . . . provided, however, that the inclusion of Indian States in the electorate shall not be taken to include any interference by the Congress with the internal affairs of such States.

Election of President

Article XVI. The several Provincial Congress Committees shall . . . suggest to the Reception Committee the names of persons who are in their

[1] There were 20 Provinces (1) Ajmer-Merwara and Rajputana; (2) Andhra; (3) Assam, (4) Bihar; (5) Bengal and Surma Valley; (6) Berar; (7) Burma; (8) C.P. (Marathi); (9) C.P. (Hindustani); (10) City of Bombay; (11) Delhi; (12) Gujarat; (13) Karnatak; (14) Kerala; (15) Maharashtra; (16) Punjab and N.W.F.P.; (17) Sind; (18) Tamil Nadu; (19) U.P.; (20) Utkal.

opinion eligible for the Presidentship of the Congress, and the Reception Committee shall . . . submit to all the Provincial Committees the names as suggested for their final recommendation, provided that such final recommendation will be of any one but not more of such names, and the Reception Committee shall . meet . . . to consider such recommendations. If the person recommended by a majority of the Provincial Congress Committees is adopted by a majority of the members of the Reception Committee present at a special meeting called for the purpose, that person shall be the President of the next Congress If, however, the Reception Committee is unable to accept the President recommended by the Provincial Congress Committees, or in case of emergency by resignation, death or otherwise of the President elected in this manner, the matter shall forthwith be referred by it to the All-India Congress Committee provided that in no case the person so elected as President shall belong to the Province in which the Congress is to be held.

* * * *

Article XIX. The All-India Congress Committee shall consider of 350 members, exclusive of ex-officio members All-India Congress Committee

Each Provincial Congress Committee shall elect the allotted number of members of the All-India Congress Committee from among the members of the Congress Committees within its jurisdiction.

Article XXI The All-India Congress Committee shall be the Committee of the Congress to carry out the programme of work laid down by the Congress from year to year and deal with all new matters that arise during the year . . .

Working Committee

Article XXIV. The All-India Congress Committee shall . . . elect 9 members who shall, with the President, General Secretaries and Treasurers, be the Working Committee of the Congress and the executive authority responsible to the All-India Congress Committee in all matters.

दिनांक Date	उधारकर्ता की संख्या Borrower's No.	दिनांक Date	उधारकर्ता की संख्या Borrower's No.